Supreme Court, U.S.
FILED
SEP 11 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 89-555

*

IN THE
SUPREME COURT OF
THE UNITED STATES
October Term, 1989

*

BENTON MUSSLEWHITE,
Petitioner

VS.

THE STATE BAR OF TEXAS,
Respondent

*

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS

*

APPENDICES TO PETITION FOR WRIT OF CERTIORARI

* * *

Volume I

Benton Musslewhite
PRO SE
1535 Mellie Esperson Bldg.
815 Walker
Houston, Texas 77002
713/222-2288

APPENDICES TO PETITION
FOR WRIT OF CERTIORARI

Appendix

A. Judgment of Suspension Entered by State District Court.

B. Order of State District Court Denying Rule 47 Motion, Requesting Supersedeas.

C. Order and Opinion of State Court of Appeals Denying Mandamus, Concerning Supersedeas.

D. Order of Supreme Court of Texas Denying Mandamus, Concerning Supersedeas.

E. Order Denying One - Justice Stay by Justice Byron White, Concerning Supersedeas.

F. Order of State Court of Appeals, Denying Rule 49(b) Motion, Concerning Supersedeas.

G. Order of Supreme Court of Texas, Dated June 14, 1989, Denying Mandamus With Respect To Court of Appeals' Denial of Rule 49(b) Motion, Concerning Supersedeas.

H. Relevant Provisions of Texas State Bar Rules, Including Sec. 24, art. 10.

I. Excerpts from news articles.
   1. Announcement of Probe of Two "Agent Orange Lawyers" (Musslewhite and O'Quinn).

2. National Article Concerning Dispute Between Musslewhite and O'Quinn and U.S. Army Over Arrow Air Cases.
3. Bar Officials Launch Trial-In-Press; Announce 17 Houston Lawyers Being Investigated.
4. Detailed Article Concerning "Masters of Disaster" Investigation.
5. O'Quinn Complains of Selective Prosecution; Discusses Appointment of Special Prosecutor.
6. ABA J1. Article Re "17 Lawyer" Investigation, Discussing Mostly Musslewhite and O'Quinn.
7. Further Discussion in Press Of Special Prosecutor and Filing Of Disbarment Suits Against Musslewhite, O'Quinn and Schwartz.
8. Further Discussion In Press Of Disbarment Suits Against O'Quinn and Musslewhite.
9. Houston Chronicle "Guilt By Association" Article Re O'Quinn, Improperly Implicating Musslewhite.
10. Another "Guilt by Association" Houston Chronicle Article About O'Quinn, Again Impliedly Tying Musslewhite to Subject Matter.
11. Musslewhite Vainly Tries To Clarify That He Is Not Part Of O'Quinn-McNeilly-Keen Situations.
12. Article Announcing 2nd Disbarment Suit Against Musslewhite.
13. Article Stating Jury Tampering Charges Against O'Quinn Untrue, But Still Mentioning Musslewhite.

14. Special Prosecution Accused By Certain Bar Officials Of Being "Runaway Prosecutor", Using "Vigilante" Tactics, And Conducting "Trial-In-The-Press".
15. Another, More Detailed Article About Special Prosecutor Being "Runaway Prosecutor", Using "Vigilante" Tactics And "Trial-In-The-Press".
16. Another Guilt-By-Association Article Whereby Alleged Witnesses Directly Accuse O'Quinn, But Musslewhite Improperly Implicated.
17. Special Prosecutor Terminated Because Of Controversial, Trial-In-The-Press, Vigilante Tactics.
18. Press Conference By Musslewhite Concerning Settlement With State Bar.
19. Press Conference By Musslewhite Concerning Filing Of Hartman-Agent Orange Suit.
20. Press Conference By Musslewhite And Newman Concerning The Piper Alpha Episode.
21. State Bar Starts In On Musslewhite Again With Its Trial-In-The-Press Tactics.
22. Further Trial-In-The-Press Of Musslewhite Concerning Piper Alpha.
23. Article In Scottish Press About Musslewhite's Fight With Texas State Bar.
24. Article In Scottish Press Quoting Other American Lawyers About Same Matters DiscussedBy Musslewhite.

25. State Bar Officials Improperly Discuss In The Press TheirEfforts To Revoke Musslewhite's Probation.

26. Discussion of the Efforts To Revoke Musslewhite's Probation in The National Press.

27. Report of Evidence At Revocation Trial.

28. Article About Smoot Of State Bar Testifying Musslewhite Did Not Contact Any Victims Or Their Families.

29. Article About O'Quinn's "Wrist-Slap" Settlement With State Bar.

30. Article Re Settlement With O'Quinn Wherein Peterson Of State Bar Admits He Had No Case Based Upon Solicitation.

31. Article Discussing "Wrist Slap" Settlement With Schwartz And How, Of All The Lawyers "Investigated", The "Harshest Penalty" Was Imposed On Musslewhite.

32. Article About Musslewhite's Work On The Agent Orange Case.

J. Disbarment Petition Against Benton Musslewhite, Concerning Solicitation.

K. Disbarment Petition Against John O'Quinn, Concerning Solicitation.

L. Excerpts From Brochure Given By State Bar To Potential Claimants Showing Failure To Answer Telephone Calls Not Normally A Ground For Discipline.

M. Excerpts From Offer Of Reprimand To Musslewhite From Committee 4-A And Rejection By Musslewhite.

N. Excerpts From Musslewhite's Request For Change Of Venue From Committee 4-C, Because Of Leaks To Press.

O. O'Quinn's Request For Change Of Venue From Committee 4-C, Because Of Leaks To Press And Hostility, With Affidavits.

P. Musslewhite's Motion For Change Of Venue In The Trial Court Because Of Prejudicial Pre-trial Publicity And Motion To Interrogate Members Of Jury Panel Separately.

Q. The "Agreed Judgment" With State Bar, Agreed To By Musslewhite To Try To End A Decade Of Harrassment.

R. Benton Musslewhite Affidavit Filed In State Court Of Appeals About All Events, But Particularly About Selective Prosecution And Harm Resulting From Denial Of Supersedeas.

S. The Referral Letters And Power Of Attorney Demonstrating That Hartman-Agent Orange Case Was Properly Referred As Required By The "Referral Clause".

T. Petition To Revoke Probation, With Exhibits, And Documents Pertaining To Service Of Same, Demonstrating Musslewhite Only Had Six Days Notice Of The Petition And Revocation Trial.

U. Motion For Continuance Filed At Revocation Trial, Asserting Violation Of Musslewhite's Procedural And Substantive Due Process Rights, Because Of Inadequate Notice Of Trial.

V. Plea and Abatement Filed At Revocation Trial, Requesting Abatement Until State Bar Complied With Sections 10-23, Art. 10, State Bar Rules Calling For Processing Through Grievance Committee And Trial By Jury.

W. Rule 47 Motion Filed In Trial Court, Requesting Supersedeas Of Suspension Judgment.

X. Papers Reflecting Requests By Musslewhite Of State Court Of Appeals To Expedite Appeal And Rejection By Court Of Appeals.

Y. Rule 49(b) Motion Filed In State Court Of Appeals By Musslewhite, Requesting Such Court To Require Supersedeas.

Z. Excerpts From Musslewhite's Third Petition For Mandamus, Concerning Supersedeas, Filed In State Supreme Court.

AA-1. Excerpts From Trial Court Record Establishing How Trial Court Implicitly Found That Musslewhite Not A Threat To Clients Or Public Because Court Granted Deferral Of Suspension.

AA-2. Excerpts From Musslewhite's Motion To Defer Suspension, Which Was Partially Granted.

AA-3.Excerpts From Brief Of State Bar In State Court Of Appeals, Demonstrating That State Bar Does Not Contend That Musslewhite Poses Threat Of Harm To Clients Or Public.

BB-1.Gloria Chaplin's Affidavit, Establishing Harm To Clients Resulting From Improvident Suspension Of Musslewhite.

BB.2.Ms. Chaplin's Trial Court Testimony To Same Effect.

CC.Excerpts From Trial Court Uncontradicted Testimony Of Musslewhite and Newman Demonstrating That Musslewhite Objected To Running Of Ad And Sending Of Letter Re Piper Alpha Matter.

DD.Articles Concerning Selective Prosecution, Including Comments About The State Supreme Court's Observations Re Selective Prosecution.

EE.Excerpts From Briefs Filed By Musslewhite In State Court Of Appeals, Discussing Points Of Error, etc.

APPENDIX A

No. 86-44452 (Consolidated)

THE STATE BAR OF TEXAS	[]	IN THE DISTRICT
	[]	COURT
	[]	
	[]	OF
	[]	
V.	[]	HARRIS COUNTY,
	[]	TEXAS
	[]	
BENTON MUSSLEWHITE	[]	270TH JUDICIAL
	[]	DISTRICT

NO. 87-24402 (Consolidated)

THE STATE BAR OF TEXAS	[]	IN THE DISTRICT
	[]	COURT
	[]	
	[]	OF
	[]	
V.	[]	HARRIS COUNTY,G
	[]	TEXAS
	[]	
BENTON MUSSLEWHITE	[]	151ST JUDICIAL
		DISTRICT

ORDER REVOKING PROBATION
AND IMPOSING SUSPENSION

On September 20, 1988, the Court called the Motion to Revoke Probation filed by the State Bar of Texas, for hearing. Petitioners in the above-styled, numbered, and consolidated disciplinary actions are the Grievance committees for

State Bar District Nos. 4-A and 4-C, State Bar of Texas. Respondent is Benton Musslewhite. The Court heard evidence on September 20, 1988, and on October 17 and 18, 1988.

The Court, after considering the evidence, arguments of counsel, and authorities, is of the opinion and rules that the Motion to Revoke Probation should be granted, that Respondent has committed professional misconduct and has violated the terms and conditions of the Court's Judgment signed on January 29, 1988, that Respondent's probation should be revoked, and that Respondent should be suspended from the practice of law for a period of three (3) years.

On November 7, 1988, the Court called the Motion to Set Hearing on Punishment; Expedite Hearing on Motion to Reconsider, Stay any Order of Suspension, If Any Pending, If Appeal is Necessary;

and or Reconsideration and Rehearing, and the Motion for Permanent and/or Temporary Injunction and Stay of Proceedings, both motions being filed by Respondent, for hearing. The Court heard evidence from Respondent.

The Court, after considering the evidence, arguments of counsel, and authorities, is of the opinion and rules that Respondent's motions for reconsideration, rehearing, stay or abatement of suspension pending appeal, and injunction, should be denied, and IT IS SO ORDERED.

1. IT IS THEREFORE ORDERED that Respondent, Benton Musslewhite, be suspended from the practice of law for a period of three (3) years, beginning on January 31, 1989, and ending on January 31, 1992.

2. IT IS FURTHER ORDERED that Respondent be enjoined during the three

(3) year suspension period from doing any of the following: (1) Practicing law (except where Respondent appears pro se); (2) Performing legal services for others; (3) Accepting fees directly or indirectly for legal services performed during the suspension; (4) appearing a counsel or in any representative capacity in any proceeding in any court or before any administrative body; (5) Holding himself out to others as an attorney or lawyer; or (6) Receiving or accepting, or agreeing with anyone to receive or accept, any fee, fee interest, or compensation in return for referring any person during the three (3) year suspension period to another attorney as a client or potential client. However, Respondent shall be permitted to receive fees for work performed or cases referred prior to the period of suspension, notwithstanding the fact that the fees

may be received during the period of suspension.

3. IT IS FURTHER ORDERED that Respondent shall on or before December 31, 1988, do all of the following: (1) Mail written notice to all current clients, opposing counsel, and courts in which Respondent has pending matters as an attorney of record, notifying them of his there (3) year suspension and of his inability to continue to represent such clients; (2) Deliver all papers, files, monies or other property belonging to current clients to such clients or to an attorney designated by any such clients or to their current attorneys in the case or matter; (3) Refund to clients any unearned fees, monies or other property belonging to current clients to such clients or to an attorney designated by any such clients; and (4) File an affidavit with the General Counsel of the

State Bar of Texas verifying that he has given written notice, delivered client property, and refunded unearned fees, all as provided herein.

4. IT IS FURTHER ORDERED that Respondent shall surrender his Texas Law License and permanent State Bar Card to the Clerk of the Supreme Court of Texas, on or before January 1, 1989.

5. IT IS ALSO ORDERED that the Court shall continue to employ the provisions of State Bar Rules art. X Sec. 33; that Hartley Hampton shall continue his appointment as Custodian for the purposes only of verifying Respondent's compliance with the provisions of Paragraph Three (3); and that the Court shall maintain and continue jurisdiction over Respondent's law practice.

6. IT IS FURTHER ORDERED that Hartley Hampton shall be compensated at a reasonable rate to be established by the

Court and to be paid out of available attorneys' fees accruing to Respondent, and Hartley Hampton shall file with this court a final fee application no later than February 1, 1989.

7. IT IS FURTHER ORDERED that Respondent furnish to Hartley Hampton within ten (10) days of this Order a list of all current clients of Respondent with the following information about each client: (1) Name, address, and telephone number of the client; (2) Full style of lawsuit to which the client is a party; (3) Name, address, and telephone number of all other attorneys representing the client.

8. IT IS FURTHER ORDERED that respondent shall be subject to further order of the Court relating to Respondent's law practice, after notice and hearing. However, Respondent shall have the right, upon notice and hearing,

to move the Court upon a showing that he has complied with the notice and other requirements of this Order, to terminate the Court's assumption of jurisdiction over Respondent's law practice.

9. IT IS FURTHER ORDERED that all costs of Court incurred since the Court signed the Judgment on January 29, 1988 shall be borne by Respondent.

SIGNED: November 21, 1988

/S/Solomon Casseb
JUDGE PRESIDING

APPROVED:

Office of General Counsel
State Bar of Texas

/S/
Steven M. Smoot
First Assistant General Counsel
State Bar of Texas
State Bar No. 18774300
P.O.Box 12487
Austin, Texas 78711
512/463-1381
ATTORNEYS FOR PETITIONER

APPROVED AS TO FORM ONLY;

/S/
Theo W. Pinson
Greenwood, Koby, Old, Pinson
& Bussey
State Bar No. 160180000

1900 Wortham Tower
2727 Allen Parkway
Houston, Texas 77019
713/523-2727

ATTORNEY FOR RESPONDENT

APPENDIX B

NO.86-44452 (Consolidated)

THE STATE BAR OF TEXAS	[ ]	IN THEDISTRICT
	[ ]	COURT
	[ ]	
	[ ]	OF
	[ ]	
V.	[ ]	HARRIS COUNTY,
	[ ]	TEXAS
	[ ]	
BENTON MUSSLEWHITE	[ ]	270TH JUDICIAL
	[ ]	DISTRICT

NO. 87-24402 (Consolidated)

THE STATE BAR OF TEXAS	[ ]	IN THE DISTRICT
	[ ]	COURT
	[ ]	
	[ ]	OF
	[ ]	
V.	[ ]	HARRIS COUNTY,
	[ ]	TEXAS
	[ ]	
BENTON MUSSLEWHITE	[ ]	151ST JUDICIAL DISTRICT

ORDER

Came on this day for consideration the Motion of Respondent pursuant to Rule 47 (a), (h), (i), (j) and (k) of the Texas Rules of Appellate Procedure for Setting of Security and Suspension of Enforcement of the Judgment Revoking

Probation, Pending Appeal, and the Court being of the opinion that same is not meritorious, it is therefore

AGREED, (sic), ORDERED and ADJUDGED that Respondent's Motion is denied seeking the relief therein.

IT IS SO ORDERED.

SIGNED THIS THE 12 DAY OF JANUARY, 1989.

/S/ Soloman Casseb, Jr.
J U D G E PRESIDING

APPENDIX C

OPINION

IN THE

COURT OF APPEALS

FOR THE

FIRST DISTRICT OF TEXAS

NO. 01-89-00033-CV

BENTON MUSSLEWHITE, Relator

V.

THE HONORABLE SOLOMON CASSEB, PRESIDING JUDGE OF THE 270TH DISTRICT COURT OF HARRIS COUNTY, TEXAS, Respondent

==========

Original Proceeding On Motion For Leave To File For Writ of Mandamus, Prohibition, and Injunction

==========

Realator, Benton Musslewhite, asks this Court to order respondent, The Honorable Solomon Casseb, presiding judge of the 270th District Court of Harris County, Texas, to stay, pending appeal,

relator's suspension from the practice of law.

Relator attacks the constitutionality of various State Bar Rules relied upon on the underlying disciplinary proceeding but primarily contends that article X, section 24 of the State Bar Rules, reprinted in appendix to Tex. Gov't Code, Title 2, Subtitle G (Vernon 1988), which prohibits a supersedeas or stay of an attorney's disciplinary suspension pending appeal, is unconsititutional.

The Texas Supreme Court has the constitutional, legislative, and inherent authority to promulgate rules controlling the admission and disbarment of attorneys. Tex. Const. Art. II, sec. 1; Tex. Gov't Code Ann. sccs. 81.024, 81.061 (Vernon 1988); Eichelberger v. Eichelberger, 582 S.W.2d 395,398 fn. 1 (Tex. 1979); see also Comment, The

Supreme Court's Power over Admission and Disbarments: Inherent or Staturoty?, 25 Baylor L. Rev. 368 (1973). The Texas Supreme Court in its order effective June 11, 1979, reprinted in 583-584 S.W.2d xxxiii-xxxv (Texas Cases), stated that it is the supreme court's duty "in the exercise of its inherent power to regulate and control the practice of law and to provide for the proper administration of justice." The supreme court in its preamble to the State Bar Rules stated that "these Rules are adopted in aid of the Court's inherent power to regulate the practice of law."

This Court, as an intermediate appellate court, is without authority to consider the constitutionality of rules promulgated by the Texas Supreme Court in the exercise of its inherent powers. See Banales v.Jackson, 601 S.W.2d 508 (Tex. Civ. App.--Beaumont), motion denied, 610

S.W.2d 732 (Tex. 1980). This Court also is without authority to stay the operation of a rule promulgated by the Texas Supreme Court. The question of the constitutionality of article X, section 24 and other State Bar Rules must be addressed to the Texas Supreme Court.

The motion for leave to file a petition for writs of mandamus, prohibition, and injunction is overruled.

PER CURIAM

Panel consists of Justices Warren, Dunn, and Hughes.

Do not publish. Tex.R.App.P.90.

Judgment rendered and opinion delivered January 19, 1989.
True copy attest:

/S/ Kathryn Cox
Kathryn Cox
Clerk of the Court

APPENDIX D

SUPREME COURT OF TEXAS
P. O. BOX 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

January 25, 1989

Mr. Benton Musslewhite
1535 Mellie Esperson Bldg.
815 Walker Avenue
Houston, TX 77002

Mr. Steven M. Smoot
First Assistant General Counsel
State Bar of Texas
P.O. Box 12487
Austin, TX 78711

RE: Case No. C-8321

STYLE: BENTON MUSSLEWHITE
V. THE HONORABLE SOLOMON CASSEB, JUDGE

Dear Counsel:

Today, the Supreme Court of Texas granted relator's motion to expedite hearing and overruled the motion for leave to file petition for writ of mandamus, prohibition and/or injunction in the above case.

Respectfully yours,

Mary M. Wakefield, Clerk

By:/s/ Barry E. Pickett,
Deputy

cc:

Hon. Solomon Casseb, Jr.
127 East Travis Street
San Antonio, TX 78205

Hon. Alice Oliver Trevathan
Judge, 151st District Court
1019 Congress, 16th Floor
Houston, TX 77002

APPENDIX E

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

JOSEPH F. SPANIOL, JR.
Clerk of Court

February 2, 1989

Mr. Bob Hager
Suite 103
Pennsylvania Ave., NW
Washington, DC 20006

Re: Benton Musslewhite,
v. State Bar of Texas and
Solomon Casseb, Judge,
Harris County, Texas-
Application No. A-611

Dear Mr. Hager:

The application for a stay and other relief pending the timely filing and disposition of a petition for a writ of certiorari in the above-entitled case has been presented to Justice White, who on February 2, 1989 endorsed thereon the following:

"Application is Denied

Byron R. White
2/2/89"

Very truly yours,

JOSEPH F. SPANIOL, JR., Clerk

By

Edward L. Turner, Jr.
Assistant Clerk

NOTE - FOR YOUR INFORMATION: A copy of this letter has been sent to all interested parties shown on the attached notification list.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

JOSEPH F. SPANIOL, JR.
Clerk of the Court

AREA CODE
479-3011

NOTIFICATION LIST

Mr. Bob Hager
Suite 103
Pennsylvania Ave., NW
Washington, DC 20006

Mr. Benton Musslewhite
1535 Mellie Esperson
815 Walker
Houston, TX 77002

Mr. Steve Smoot
Asst. Attorney General
State Bar Bldg., Capitol Sta.
Austin, TX 78711

Mr. Solomon Casseb
270th Jud. Ct. of Harris Cty.
127 East Travis
San Antonio, TX 78205

APPENDIX F

FOURTEENTH COURT OF APPEALS
1307 San Jacinto, 11th Floor
Houston, Texas 77002

J. CURTISS BROWN
Chief Justice

MARY JANE SMART
Clerk

PAUL PRESSLER
WILLIAM E. JUNELL
PAUL C. MURPHY
SAM ROBERTSON
ROSS A. SEARS
BILL CANNON
JOE E. DRAUGHN
GEORGE T. ELLIS

JUSTICES

HELEN A. CASSIDY
Chief Staff Attorney

PHONE
713-655-2800

February 16, 1989

Hon. Benton Musslewhite
609 Fannin
Suite 517
Houston, TX 77002

Hon. D. Craig Landin
Conner, Odom & Clover
P. O. Box 570
Sealy, TX 77474

RE: CASE NO. 14-89-00041-CV TRIAL COURT CASE NO. 86-4452

STYLE: Musslewhite, Benton V: The State Bar of Texas

Counsel:

Please be advised that on this date,

the Court DENIED motion pursuant to Rule 49(b), in the above cause.

Respectfully yours,

MARY JANE SMART, CLERK

By /S/ Mary Jane Smart
Deputy

APPENDIX G

SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

June 14, 1989

Mr. Benton Musslewhite
1535 Mellie Espeson Bldg.
815 Walker Avenue
Houston, TX 77002

Ms. Linda A. Acevedo
Assistant General Counsel
State Bar of Texas
P. O. Box 12487
Austin, TX 78711

Mr. Steven D. Peterson
Office of the General Counsel
State Bar of Texas
P. O. Box 12487
Austin, TX 78711

RE: Case No. C-8485

STYLE: BENTON MUSSLEWHITE
v. THE HONORABLE SOLOMON CASSEB and THE STATE BAR OF TEXAS No.86-44,452 in the 270th District Court, Harris County Original Mandamus/Prohibition/Injunction Proceeding

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for

leave to file petition for writ of mandamus, prohibition and injunction in the above styled case. Relator's motion to expedite was granted. Relator's motion for temporary relief was overruled.

Respectfully yours,

John T. Adams, Clerk

By/S/ Peggy Littlefield
Peggy Littlefield, Chief Deputy

cc:
Solomon Casseb, Jr.
49 District Court
Webb County Courthouse
1000 Houston Street
Laredo TX 78040

APPENDIX H

DISCIPLINARY RULES

Section 22. Conduct Constituting Threat of Harm to Clients

(A) Evidence of Irreparable Harm. Upon receipt of evidence of just cause demonstrating that a lawyer poses a substantial threat of irreparable harm to his clients or prospective clients, the appropriate grievance committee shall authorize counsel to seek the interim suspension of such lawyer as hereinafter provided. Authorization for interim suspension shall require the affirmative vote of two-thirds (2/3) of the committee members present and voting.

Immediate Interim Suspension. The court may enter an order in the nature of a temporary restraining order immediately suspending the lawyer pending the final disposition of a

disciplinary action predicated upon the conduct causing the harm or may order such other action as deemed appropriate. In the event the order is entered, the court may appoint a custodian pursuant to Section 33 to proceed clients' interests. The matter shall then proceed as in cases of temporary injunctions under the Texas Rules of Civil Procedure.

(C) Notice to Client. A lawyer suspended pursuant to paragraph (B) shall comply with the notice requirements in Section 32.

Section 26. Compulsory Discipline

(A) Generally. When an attorney has been convicted of a serious crime, counsel shall initiate an action seeking compulsory discipline pursuant to this section. Except as otherwise

provided in this section, the provisions of this Article relating to the procedure in disciplinary actions shall apply to actions brought hereunder. Proceedings hereunder are not exclusive in that an attorney may be tried on the underlying facts as well as upon the conviction itself.

(B) Serious Crime Defined. A serious crime, for the purpose of this section, shall be any felony involving moral turpitude or any misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property. A conviction for the attempt, conspiracy, or solicitation of another to commit a serious crime shall also be deemed to be a conviction of a serious crime for the purposes of this rule. The determination of whether a particular conviction constitutes a conviction of a serious crime is a

question of law to be determined by the court.

(C) Evidence of Guilt. In any action brought to discipline an attorney who has been convicted of a serious crime, the records of conviction shall be conclusive evidence of the guilt of the attorney for the crime of which the attorney was convicted.

(D) Commencement of Suit. Discipline under this section shall be initiated by the filing of a disciplinary petition in a district court of the convicted attorney's residence. Said petition shall allege the conviction and shall seek the appropriate discipline as provided herein.

(E) Procedure. The district court shall proceed to hear and determine all questions of fact and law as

hereinafter provided without the aid of a jury. When an attorney has been convicted of a serious crime in any trial court of competent jurisdiction, the attorney shall be suspended from the practice of law pending any appeal of that criminal conviction. Upon introduction into evidence in the disciplinary action brought hereunder of a certified copy of the judgment if conviction and sentence and a certificate of the clerk that the attorney is licensed by the Court, the district court in which the disciplinary action is pending shall promptly determine whether the attorney has been convicted of a serious crime. Unconverted affidavits that the attorney is the same person as the person convicted in the criminal action and that the attorney is a resident of the county in which the disciplinary

action is brought shall constitute competent and sufficient evidence of those facts. Nothing contained herein shall prohibit proof of the necessary elements in such proceeding by competent evidence in any other manner permitted by law. The district court shall set, hear, and determine whether the attorney should be disciplined within forty-five (45) days of the answer day; however, any failure to do will not affect its jurisdiction to act. any suspension ordered pending appeal of a criminal action shall be interlocutory.

(F) Disbarment. When an attorney has been convicted of a serious crime in any court of competent jurisdiction and that conviction has become final, the attorney shall be disbarred, except as provided in paragraph (G) below. If the attorney has been suspended pending

the appeal of the criminal conviction, a motion for final judgment of disbarment shall be filed in the pending disciplinary action. If the motion is supported by affidavit or certified copies of court documents showing that the conviction has become final, the motion shall be granted without hearing, unless within ten (10) days following service of the motion upon the convicted attorney or his or her attorney of record, pursuant to Rule 21a of the Texas Rules of Civil Procedure, the convicted attorney files a verified reply contesting the finality of the judgment, in which event the court shall conduct an evidentiary hearing to determine such issue. If no disciplinary action is pending when the attorney's conviction becomes final, disbarment shall be initiated by the filing of a

disciplinary petition pursuant to this section.

(G) Suspension. If an attorney's sentence upon conviction of a serious crime is fully probated, or if an attorney receives probation without an adjucation of guilt, the attorney shall be suspended during the term of such probation; however, upon notice and hearing, the court in the disciplinary action may impose upon an attorney who has received probation such further disciplinary sanction as may be warranted, including disbarment. If an attorney is suspended during the term of probation, such suspension is conditioned upon the attorney satisfactorily serving the terms of such probation. If probation is revoked, the attorney shall be disbarred as herein provided.

SECTION 24.

Appeal: No Supersedeas

Either party by a disciplinary action shall have the right of appeal to the Court of Appeals but, if the judgment appealed from be one suspending or disbarring the respondent, he or she shall not be entitled to practice law in any form while the appeal is pending and shall have no right to supersede the judgment by bond or otherwise.

DR 2-101. Publicity and Advertisting

(A) A lawyer shall not make, on behalf of himself, his partner, associate, or any other lawyer, any false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) Contains a statement of opinion as to the quality of legal services;

(3) Contains a representation or implication regarding the quality of legal services which

is not susceptible to reasonable verification by the public;

(4) Contains predictions of future success;

(5) Contains statistical data which is not susceptible to reasonable verification by the public;

(6) Contains other information based on past performance which is not susceptible to reasonable verification by the public;

(7) Contains a testimonial about or endorsement of a lawyer;

(8) Is intended or is likely to create an unjustified expectation about results the lawyer can achieve.

(B) A lawyer who publishes, advertises, or broadcasts, with regard to any area of the law in which he practices must, with respect to each area of the law so advertised, publish

or broadcast the name of the lawyer, licensed to practice law in Texas, who shall be responsible for the performance of the legal service in the area of law so advertised.

(C) Each lawyer whose name is either published, advertised, or broadcast pursuant to DR 2-101(B):

(1) Who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised must state with respect to each area, "Board Certified, (area of specialization) --Texas Board of Legal Specialization."

(2) Who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised must state with

respect to each area, "Not certified by the Texas Board of Legal Specialization." Where the area so advertised has not been designated as an area in which a lawyer may be awarded a Certificate of Special Competence by the Texas Board of Legal Specialization, the lawyer may also state, "No designation has been made by the Texas Board of Legal Specialization for a Certificate of Special Competence in this area." Such statements must be displayed conspicuously so as to be easily seen or understood by any consumer.

(D) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication media in anticipation of or in return

for publicity in a news item, except that the provisions of this paragraph shall not prohibit payment of the cost of lawyer advertising permitted under this rule.

(E) A lawyer who makes or causes to be made any form of written, recorded or broadcast public communication shall retain a copy of same for a period of four (4) years from the date such communication is first made or caused to be made.

DR 2-107. Division of Fees Among Lawyers. (A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each, or is made with a forwarding lawyer.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This Disciplinary Rule does not

prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

APPENDIX I-1

Newsday
May 15, 1986

Excerpts from

AGENT ORANGE LAWYERS PROBED

By Carolyn Colwell

The Texas State Bar Association is investigating allegations that two Houston attorneys solicited Agent Orange cases, some of which apparently came from a Manhattan veterans group.

The same investigation involves possible solicitation through a second veterans group of cases resulting from the Grander air crash, which killed 248 American soldiers.

Both of the attorneys, Benton Musslewhite and John O'Quinn, who helped manage the class-action brought by thousands of Vietnam veterans,

acknowledged that they are under scrutiny by the Texas bar. They deny any wrongdoing.

And while Texas bar officials have refused to confirm or comment on the investigation, Agent Orange veterans and others in Texas, Washington, D.C., and Long Island say they have been contacted by a Texas bar investigator. Some of the veterans said the investigator asked them about how the lawyers obtained their clients.

Sources aware of the investigation say that it is wide-ranging and involves additional attorneys and other personal injury cases.

Musslewhite, who has claimed he represents over 2,000 Agent Orange plaintiffs, confirmed Tuesday that he is being investigated for soliciting Agent Orange and Gander cases.

. . .

"That's a hell of a note to say we solicited Agent Orange," said Musslewhite, who has led the opposition to the $180-million settlement of the Agent Orange case. "No possible way," he added. Musslewhite said all his Agent Orange cases were referred to him by some attorneys across the country. Court records show that Musslewhite has said the majority of his cases were referred by Todd Ensign, a New York attorney who is general counsel to a veterans' group known as Citizen Soldier.

All of the referrals were "perfectly legitimate," Musslewhite said.

Musslewhite said he paid a referral fee to Ensign, adding that Ensign also worked on the Agent Orange case. In New York, an attorney may share a fee on a referred case if he also works on or takes some responsibility for the

case. Musslewhite would not say how much Ensign's referral fee was.

Ensign also declined to comment on the nature of his fee arrangement with Musslewhite, although he acknowledged that his organization sent Agent Orange veterans to Musslewhite.

. . .

Musslewhite said the Texas bar also is investigating whether another veterans' group, United Veterans of America, passed out information about him and O'Quinn to solicit three cases resulting from an air crash in Gander, Newfoundland. Musslewhite again said these cases were normal referrals.

Musslewhite said he received the referrals because veterans are grateful to him the Agent Orange case.

O'Quinn has participated in major-disaster litigation such as the case involving the Ocean Ranger oil rig and

has a reputation for competence and honesty, according to Tom Weatherly, a senior partner at Vinson & Elkins which was former Gov. John Connally's old firm. O'Quinn declined to comment on the bar investigation.

But his Houston attorney, David Berg, said he would confirm "leaks" that the bar is investigating O'Quinn in connection with solicitation of Gander cases.

In relation to Agent Orange, Berg added, "It's just a general investigation of virtually every lawyer, at least any lawyer in this city, who was involved in the Agent Orange case." Berg said he assumes the Agent Orange investigation concerns soliciting, an allegation O'Quinn denies.

Berg added, "All I can say is what they say in Texas: No matter how thin

APPENDIX I-2

THE NATIONAL LAW JOURNAL
June 2, 1986

Excerpts from

Allegations of Solicitation

Army, Lawyers Feud Over Crash

By Gary Taylor
Special to The National Law Journal

HOUSTON - Two prominent local attorneys have declared war on the U.S. Army over its comments about solicitation of clients after last December's crash of an Arrow Air DC-8.

The attorneys - Benton Musslewhite, a sole practitioner here, and John O'Quinn of O'Quinn & Associates - have criticized the Army for mentioning their names in discussing complaints from families of some soldiers killed in that disaster near Gander, Newfoundland. The Army has called the whole matter a misunderstanding.

Both Messrs. Musslewhite and O'Quinn

noted that the Army has compiled its own list of firms specializing in aircraft matters, which was sent to potential plaintiffs - neither of the lawyers appears on the list - and that it has sent legal assistants to explain litigation procedures to the dead servicemen's families.

The dispute probably will not go much further than the exchange of letters that already has occurred.

But, in the process, the Army has claimed there were several solicitation problems stemming from the disaster, which claimed the lives of 248 servicemen. (NLJ. Feb 3.)

"A number of attorneys have initiated contacts. There was a great deal of it at first," said Maj. John Meixell, deputy at the Office of the Judge Advocate General in Washington, D.C.

Monitoring Situation

So far, Major Meixell has not forwarded any complaints to local bar associations for investigation. But he said his office is maintaining a file on the problem and will continue to monitor the situation.

The major was quick to emphasize that he has not been critical of Messrs. Musslewhite and O'Quinn and that he never initiated any discussions about the solicitation complaints filtering into his offie.

But Major Meixell described one instance in which a man claiming to be a minister called a grieving family with an offer to lead them in a telephone prayer session. After the "amens" were said, the alleged minister followed up with some legal referrals.

In another case, a man contacted a family

two days after the crash and asked to speak with the dead soldier. When told about the mishap, he identified himself as an investigator for a law firm and offered to help find attorneys to handle the litigation.

Neither of those incidents involved Messrs. Musslewhite and O'Quinn, who represent three servicemen's families through referrals from veterans familiar with Mr. Musslewhite's work seeking awards for Vietnam servicemen injured by the defoliant Agent Orange.

Responding to the press reports mentioning his name, Mr. Musslewhite fumed: "The Army should spend its time cleaning up its own house by doing something about the planes on which it flies servicemen. If my clients cannot refer lawsuits to me, I may as well close up shop."

Added Mr.O'Quinn: "Even though the

Army is not a defendant in the crash, they are not disinterested."

Mr. Musslewhite predicted that the Army may eventually end up as a defendant in some suits, and he charged that it has overstepped its bounds in helping the families locate private counsel.

. . .

Major Meixell also compiled a list of eight private firms boasting experiene in aircraft litigation, and forwarded that list to the families.

When some other firms complained about their omission from the list, he said, his office reviewed their credentials and added three more firms.

'Overreacting'

The existence of those lists prompted Mr.O'Quinn to charge that the Army itself is soliciting on behalf of the firms it has listed.

Major Meixell said Mr. Musslewhite and Mr. O'Quinn are "overreacting" to published reports of his comments.

After reading a letter from Mr. Musslewhite, the major said: "I'm at a loss as to why he's so upset. By having free legal-assistance attorneys available to the families we informed them of their rights. We checked with the American Bar Association and they had no referral list on airline crashes. The families have received a worthwhile service."

. . .

But Mr. Musslewhite remains unimpressed.

"I just can't believed they jumped on us." he said. "They criticized all the lawyers who got cases without being on their list. I've spent $300,000 of my own money on the Agent Orange cases. I'm steamed about it."

APPENDIX I-3

The Texas Lawyer
June 11, 1986
Vol. 2, No. 11

Excerpts

Bar investigating alleged solicitation

By Ronda Baker

The State Bar of Texas is investigating 17 Houston-area lawyers for alleged misconduct and one of the lawyers under scrutiny said he thinks most if not all of the allegations deal with improper solicitation of clients.

. . .

Houston solo practitioner Benton Musslewhite said he received a letter from the bar asking him how clients were referred to him in the Agent Orange and Arrow Air crashes and several other personal-injury cases during the last several years. Musslewhite calling the investigation a "witchhunt." denied any wrongdoing and

said he had not heard from bar investigators since responding to that letter.

"This is a broad-brush type of inquiry. They're asking me how I was hired in those cases. The day they make that (legitimate referrals) illegal, we can all shut down our offices and go home."

Musslewhite represents three clients in the Gander, Newfoundland crash case with Houston lawyer John O'Quinn, who is reportedly under investigation by the same Houston grievance committee, and Miami lawyer Charles Lipcom. O'Quinn has said the bar is looking into the way he and Musslewhite signed up clients in that and the Agent Orange cases. Musslewhite and O'Quinn were on the nine-lawyer team that helped negotiate the establishment of a $180 million

settlement fund for victims with several chemical companies who manufactured the defoliant.

. . .

The Army provided each victim's family with a legal assistant to help the family locate a lawyer and negotiate fees. Also provided was an Army prepared list of law firms experienced in aviation laws. The firms had been involved in negotiations with the Army to reduce fees by about 15 percent overall, a Pentagon spokesman has been quoted as saying.

Musslewhite and the Houston lawfirm O'Quinn & Associates were not on the list.

Maj. John Meixell of the Office of Judge Advocate General in Washington has said some non-listed lawyers hired in the case used representatives of veterans organizations to solicit cases

or left newspaper clippings about awards won for clients. But Meixell has not forwarded any complaints to local bar associations, he has said.

Musslewhite said he sent Meixell an angry letter regarding Meixell's comments. He accused the Army of trying to get a client to change lawyers after he had been hired to represent the client.

"After the client had hired us, a lieutenant from the judge advocate general's office on a particular (Army) base approached him with a brochure about a lawyer on the list." Musslewhite said. He declined to name the lawyer but said it was someone he "was at odds with on the Agent Orange case and who did a very poor job of settling the case."

Musslewhite accused the Army of using the list to suggest firms that

would overlook what he says is a case arguably not covered by the Feris Doctrine, which exempts the military from being sued by servicemen.

Musslewhite said O'Quinn has also been asked about the way he obtained clients in connection with the Delta crash. The two lawyers jointly represent one Delta client and Musslewhite said the bar has not asked them how they obtained that client.

The San Antonio Light has reported that the bar is also looking into allegations that O'Quinn made improper ex parte communications with Texas Supreme Court Justice C. L. Ray while O'Quinn had a case pending before the court. The allegations were made in a public hearing of the Houston Committee on Judicial Affairs, which is investigating alleged misconduct by Supreme Court justices.

O'Quinn's attorney, David Berg of Houston, said he had advised his client not to comment on the investigation which he said has been going on for six months.

Berg resigned as chairman of the State Bar District 4-B grievance committee in Houston because of a bar policy, passed in April, prohibiting committee members from representing any lawyer under investigation for misconduct. The District 4-C committee, whose chairman is Larry Dougherty, is carrying out the investigation of O'Quinn. Berg said.

. . .

Musslewhite said he has informed the bar that most of his more than 2,000 Agent Orange clients were referred to him through Todd Ensign, general counsel for Citizen Soldier, a Manhattan veterans group. At least one

of the three Gander clients was referred to him by the Brotherhood of Vietnam Veterans, affiliated with Citizen Soldier, he said.

"I do not pay somebody to bring me cases." Musslewhite said. "If anybody says I do, I want to see the whites of their eyes in the courtroom."

Musslewhite said the bar doesn't "have one single complaint from any client or potential client" about him. "We have one of these witchhunts about every 30 years."

He accused the bar of being defense-oriented and said the litigation crisis has set corporate defendants on a scheme to discourage plaintiffs.

"Insurance companies, chemical companies and manufactories have become very frustrated the last three or four years with the legal process." Musslewhite said. "They think the

best way to fight the litigation crisis is, No. 1, to intimidate plaintiff's lawyers by investigations so good lawyers will get out of the business."

APPENDIX I-4

Express News
San Antonio's quality newspaper--
largest circulation in South Texas

TEXAS BAR TARGETS 'AMBULANCE CHASERS'
Four Named in Allegations of Improper Solicitation

By Jerome P. Curry

Express News Staff Writer

Four lawyers have been charges with improper solicitation of clients by the State Bar of Texas and six others are facing action after the State Bar launched a secret probe into what it calls an international ambulance-chasing scandal.

The State Bar investigation, carrying the code name Masters of Disaster, is outlined in secret files obtained by the Express-News.

One State Bar target, Benton Musslewhite of Houston and one of the best known personal injury lawyers in Texas, called the inquiry and

subsequent disciplinary action a "vendetta by corporations and insurance companies."

Musslewhite already had been ordered by Judge Solomon Casseb of San Antonio to begin serving on Jan. 29 a three-year suspension from law practice in Texas.

"You'll have to admit old Musslewhite has tackled some seriously big windmills," said Richard "Racehorse" Haynes of Houston, one of the best-known criminal defense lawyers in Texas. "And a lot of people backing the Establishment were on the other side of the docket."

Both Musslewhite and Haynes were on a "hit list" of 10 Houston lawyers in connection with allegations of improper solicitation of clients from disasters in India and numerous Pacific and European countries, as well as the United States.

Both Haynes and sources at the State Bar said Haynes was cleared. The criminal lawyer's appearance on the inquiry's agenda was especially curious because, as Haynes noted, he does not practice personal injury law.

Musslewhite said he was convinced that Haynes was on the list simply because he had represented him at one time in State Bar grievance proceedings.

Haynes did not disagree.

"Your sources are right," the defense lawyer said. "I represented some of the attorneys at one time, and a witness. There was some suggestion of conflict. But I did not represent them in the same proceedings. There was nothing to it. They know that."

According to grievance committee files, the charges of improper seeking of clients involved cases as diverse as the continuing Agent Orange litigation

in behalf of Vietnam veterans to the sinking of the Ocean Ranger rig off Newfoundland in 1983.

Settlements in the Agent Orange cases already total more than $180 million. A $22 million settlement was reached in behalf of injured and slain workers and their families in the Ocean Ranger case.

State Bar discipline litigation, which can include disbarment or suspension, is pending in state district courts against lawyers John O'Quinn, Newton Schwartz and Doug Cherry.

All except Cherry have been associated in some way with Mussalewhite's international practice in behalf of disaster victims. Mussalewhite, O'Quinn and Schwartz were all on the national legal steering committee in the Agent Orange cases.

Mussalewhite believes he is the

lightning rod for vengeance-seeking corporations. Their attorneys, he said, "see nothing amiss about corporate lawyers taking a few dollars to a disaster scene and having releases signed; but the same lawyers scream when other attorneys remind a corporation's victims of their rights."

In one case memorandum, a State Bar investigator wrote of Musslewhite that he offered his services as an attorney to clients who had not sought his advice:

"Specifically including but not limited to victims, survivors, next of kin or surviving family members of the following disasters or accidents: 'Agent Orange' litigation, Air Arrow DC-8 crash, AMC fire, Arctic Explorer sinking, Bhopal, India Union Carbide chemical spill, Challenger space shuttle explosion, DC-3 cases, English

Global Marine cases, Global sinking, Sikorsky helicopter cases, the silicosis cases."

Musslewhite said it appeared to him he had been selected by the Establishment lawyers as the man to get.

. . .

APPENDIX I-5

The Houston Post
July 21, 1987

Houston attorney fights bar's disciplinary action

By HOPE E. PAASCH
Post Reporter

Houston attorney John O'Quinn, known for his high-dollar settlements and successes in personal injury cases, is fighting a State Bar of Texas disciplinary action against him by attacking the appointment of a special prosecutor.

O'Quinn was represented in court Monday by defense attorney Richard "Racehorse" Haynes and constitutional law expert Gerald T. Treece, who argue O'Quinn is being subjected to selective prosecution by an improperly appointed special prosecutor for violation of a state bar rule that may be

unconstitutional.

The disiplinary action filed last February in state district court against O'Quinn charges he paid non-lawyers to solicit clients, an action banned by state bar rules.

Also in February, the state bar board of directors voted to appoint Houston attorney Tom Alexander as a special prosecutor to handle the case against O'Quinn, as well as disciplinary cases against attorneys Benton Musslewhite and Newton B. Schwart.

The Supreme Court of Texas refused to approve a budget item to pay Alexander for his work, and the attorney has agreed to donate his services.

State District Judge Richard Millard began a hearing Monday on several pre-trial issues raised by O'Quinn's

attorneys. The hearing is scheduled to resume at 9 a.m. today.

The issues include whether Alexander was properly appointed and thus has standing to prosecute the case; whether the state bar's rule against solicitation violates the Constitution; and whether O'Quinn's constitutional rights are being violated by selective prosecution.

Most of Monday's testimony was aimed at whether Alexander has any standing to act as a special prosecutor.

APPENDIX I-6

NEWS
ABA JOURNAL
September 1, 1986

UNDER THE SOLICITATION GUN
Allegations spur probe of 17 Texas lawyers

The eyes of the State Bar of Texas are upon allegations of improper case solicitation. The bar's widespread investigation involves at least 17 lawyers, many of whom practice personal injury law.

The allegations tend to center on Agent Orange cases, the Arrow Air crash at Gander, Newfoundland, which killed 248 U.S. soldiers, the Delta Airlines crash at Dallas and workers' compensation claims allegedly funneled through a Houston firm.

Under scrutiny are Houston lawyers Benton Musslewhite, John O'Qujinn and the Houston personal injury firm,

Schechter, Eisenman & Solar. Houston lawyer Newton Schwartz also is said to be under investigation, but he said he has received no notification from the bar regarding it.

Musslewhite, O'Quinn and Schwartz were part of the nine-lawyer team that negotiated a $180 million settlement for Agent Orange victims in May 1984.

Because grievance proceedings against lawyers are confidential by state law, bar officials declined to comment onthe matters.

Musslewhite, however, confirmed that he is being investigated for alleged solicitation of Agent Orange cases as well as cases resulting from the Arrow Air crash.

He said he received a letter from the bar in April asking him how clients were referred to him.

Musslewhite denied wrongdoing "I have always received cases from other lawyers or from legitimate organizations like veteran's associations," he said.

Musslewhite suggested the bar's intensified interest in case solicitation has its roots in press coverage of the Aug. 2, 1985, Delta air crash in Dallas, which killed 133 people. He said both he and O'Quinn handled cases resulting from that crash.

Two days after the crash, two lawyers - Melvin Belli's son, Caesar, and co-worker Richard Brown - arrived from San Francisco at a hotel where many of the victims' families were staying. In the wake of press stories about their presence, they said they were invited to Dallas by clients who had relatives in the crash.

"[Caesar] Belli came over here ..." Musslewhite said, "and the bar criticized him and started an investigation into it and into high-visibility lawyers in other cases receiving national attention, like Agent Orange, the Air Arrow crash and Bhopal [India]."

Houston lawyer David Berg, representing O'Quinn, confirmed that his client is also being probed regarding referrals but insisted that "O'Quinn is catching the heat for Benton [Musslewhite]."

Berg said, "He is involved insome cases with Musslewhite. Musslewhite referred some cases to him. But he is innocent of any wrongdoing."

The probe of Musslewhite comes on the heels of an ongoing investigation by the Texas Attorney General's Office of his connection with workers'

compensation cases tied to a Houston firm, the "Harris County Accidednt Board."

In July, the Harris County Accident Board, a private company accused of misleading workers' compensation claimants into thinking they were dealing with an official state board, was temporarily enjoined from using the words "Harris County" or "Board" in its name.

. . .

Musslewhite is one of the lawyers named in an affidavit a woman gave alleging that the Accident Board referred her to him. Musslewhite said he never met the woman, Wanda Clark, and that his firm never handled a case for her.

. . .

"It's a set-up," Musslewhite responded. "I think I was named to

spread the heat around among lawyers who were not involved. Only two firms do business with them regularly."

. . .

APPENDIX I-7

THE TEXAS LAWYER
FEBRUARY 2, 1987

EXCERPTS

THREE SUED BY BAR

HOUSTON LAWYERS NAMED IN DISCIPLINARY ACTIONS

By LINDA PONCE

The State Bar has filed disciplinary suits against two Houston lawyers and added charges to a 3 1/2 month-old suit against a third.

. . .

The Bar is seeking disciplinary action against Musslewhite in a separate suit filed Oct. 1, 1986, in 270th District Court in Houston.

On Jan. 19, first assistant general counsel Steve Smoot mailed a second amended disciplinary petition to the court, adding two counts to the suit already pending against Musslewhite.

. . .

The Bar is seeking disbarment suspensions or reprimand in each case.

The Bar's board of directors voted in November to hire a special prosecutor to handle the cases against Musslewhite, Schwartz and a third attorney whose name has not been released.

Board members would not say why Houston grievance committee had requested the special prosecutor to handle the cases - collectively referred by board members as the "Houston Solicitation cases" - in place of Bar general counsel Steve Peterson.

Grievance committee 4C chairman Larry Doherty, a partner in Houston Doherty & Williams, said a "multitude of reasons" led to the request. But he said it was "certainly not a reflection

on the general counsel's office." ...

The Houston cases stem from an investigation started last spring into alleged improper client solicitation primarily involving the Agent Orange cases, the August 1985 Delta Air Line crash at Dallas-Fort Worth Airport and the Arrow Air military transport crew at Gander, Newfoundland, in December 1985.

The investigation was handled by grievance committee 4C, chaired by L. Doherty and former assistant general counsel Thomas W. Johnson, who is in the Houston office.

Schwartz, Musslewhite and O'Quinn were among nine lawyers who negotiated a $180 million settlement in Agent Orange litigation in May 1984.

Both Musslewhite and O'Quinn acknowledged last year that they were being investigted and denied

wrongdoing.

But Schwartz, charging that Bar employees had leaked confidential information to a Houston Chronicle reporter, sued the newspaper.

Schwartz called the suit against him "strictly something they've drummed up" that is politically motivated.

"It's just another shot they're taking against us," he said. "This will be dismissed in due time."

He said he plans to challenge the jurisdiction of the grievance committee as he did last summer, when he was asked to testify during the investigation.

According to court papers, last July Schwartz asked that Doherty and the committee be disqualified from hearing Schwartz's case. ...

According to court records, Schwartz also claimed that the committee was

"tainted improperly" by Doherty's "personal prejudice and motives."

Doherty called the claim that he received privileged files "an absolute ... damn lie." Peterson said Doherty did not have access to the Bar's grievance files.

Both Peterson and Doherty said that the general counsel had given Doherty's name to two people who said they could not find a lawyer to file a malpractice suit against an East Texas lawyer. But Doherty said he and Peterson had not and were "never going to" split a fee in the case Doherty filed.

"He never asked for a fee over that," Doherty said.

Peterson added: "I don't refer cases other than for friends, and I don't accept referral fees." ...

Another grievance committee, to which O'Quinn won a change of venue

reportedly voted Nov. 19 to take disciplinary action against him. O'Quinn's lawyer, David Berg of Houston would not comment.

APPENDIX I-8

The Houston Post
February 27, 1987

Bar alleges misconduct by O'Quinn

The State Bar of Texas accused noted Houston lawyer John O'Quinn of professional misconduct in a lawsuit filed Thursday in 189th District Court.

The suit, which alleges O'Quinn paid non-lawyers to solicit cases for him and also set up an improper fee-splitting arrangement with Houston Benton Musslewhite, could lead to O'Quinn being disbarred, suspended or reprimanded. Neither O'Quinn nor Musslewhite could be reached for comment Thursday night.

The suit, filed by Assistant General Counsel Steven Smoot, alleges O'Quinn agreed to finance Musslewhite's law practice in return for a share of Musslewhite's fees.

Under the arrangement, the suit claimed O'Quinn would not perform any legal service nor assume any responsibility for representing the client.

O'Quinn, noted for the large judgments he has won in several personal injury cases, collaborated with Musslewhite as part of a team of lawyers across the country in gaining the controversial $250 million settlement of the Agent Orange lawsuit for Vietnam veterans.

The suit filed Thursday also accused O'Quinn of paying non-lawyers to secure cases for him and claimed he promised to pay or paid some non-lawyers a share of his fees in violation of Stater Bar rules.

The State Bar cited specifically a lawsuit involving the family of a soldier who died in December 1985 when

an Arrow Air charter plane crashed and burned at Gander, Newfoundland, killing 254 soldiers and crew members.

O'Quinn was asked in May 1986 to respond in writing to "various allegations of professional misconduct," the suit said, but failed to do so.

APPENDIX I-9

(Excerpts from)

The Houston Chronicle
May 10, 1987

Private investigator tells probers of 'ambulance chasing' for lawyer

By DIANNA HUNT

A man seriously injured in a drilling rig accident was contacted in his Houston hospital room by a private investigator trying to sign him up as a client for Houston attorney John O'Quinn, according to sworn statements from the investigator.

James C. McNeilly, who operates JCMI Investigations, says in the statement that the case was one of more than 150 he solicited as a "runner" for O'Quinn for more than a year.

The allegations of case-running or "ambulance chasing" are among several charges of possibly unethical or illegal conduct by O'Quinn and others

now under investigation by the State Bar of Texas and the Harris County District Attorney's office.

O'Quinn attorneys, David Berg and Richard "Racehorse" Haynes, issued a joint statement Friday in response to the allegations.

"In the fullness of time, no more than six to eight weeks from now, it will be clear that Mr. McNeilly is not a credible witness against Mr. O'Quinn or anyone else," the attorneys said.

"We remain confident that Mr. O'Quinn, after an airing of these issues in the (state) district court, will be vindicated," they said.

The attorneys said they are limited in what they can say about O'Quinn by a gag order from a federal judge in Galveston. The order remains in effect while Houston federal officials investigate allegations of jury

tampering in a record $105-million verdict there.

McNeilly's sworn statement was submitted April 30 to Houston private investigator Clyde Wilson, hired to probe the cases by the state bar's special prosecutor, attorney, Tom Alexander of Houston.

The affidavit has been turned over to the Harris County District Attorney's office and the U.S. Attorney's office in Houston.

"I've received some information from Mr. Wilson and the FBI is taking a look at the materials," said Assistant U.S. Attorney Scott Woodward, chief of the criminal division. He declined further comment.

District Attorney John B. Holmes Jr. has declined comment on the allegations.

McNeilly has been granted immunity

by state and federal prosecutors, and testified April 24 before a federal grand jury investigating the alleged jury tampering, said his lawyer Mark Vela of Houston.

In the case involving the drilling rig accident, McNeilly says O'Quinn told him of reports of an injury in Belize in Central America.

O'Quinn "told me he did not know the name of the company, but to go find out about it and sign the man up for him," McNeilly said in the statement.

After learning the man had been transferred to a Houston hospital, McNeilly said he "just went into his hospital room, introduced myself, and told him what a great lawyer John M. O'Quinn was and tried to sign him up," according to the statement.

In exchange, McNeilly said O'Quinn promised to pay him 25 percent of the

attorney fees he earned on the case, according to the statement.

The injury led to a federal lawsuit in 1985 filed by O'Quinn on the man's behalf. The case is pending before U.S. District Judge James DeAnda, although O'Quinn has been replaced by an attorney who formerly worked in his law firm.

McNeilly's statement raises allegations of case-running against at least eight other Houston attorneys in addition to O'Quinn. Allegations against the other lawyers will be turned over to the state bar for investigation and, perhaps, for hearings before a bar grievance committee, said special prosecutor Alexander.

McNeilly's statement also gives an insider's look into activities that allegedly go on behind the scenes at a

big disaster.

For example, McNeilly says he traveled to Dallas in August 1985 to sign up relatives of the 137 people who died in the crash of Delta Flight 191 at Dallas-Fort Worth Airport. He was so busy, he says, that he ran out of informational brochures.

"I recall that I ran out of brochures and needed some more of John O'Quinn's books to assist me in running the case, and another lawyer (in O'Quinn's office) supplied them to me," McNeilly says in the statement.

O'Quinn has filed several lawsuits on behalf of the survivors of those who died in the crash.

McNeilly said he also obtained credentials as an officer of the Panamanian government that would allow him to board ships at the Port of Houston to try to sign up injured

seamen.

"I had an identification card which enabled me to go aboard any ship flying the Panamanian flag," McNeilly said in the statement.

McNeily, a licensed private investigator, says he did standard investigative work as well as case-running. He says he was misled into believing his actions were legal, when they may not have been.

"My principal duties were to learn of accidents, contact the plaintiffs in the accidents, and sign them up with powers of attorneys for the various lawyers I have named," McNeilly says in the statement.

. . .

The agreements were not in writing. McNeilly says O'Quinn has paid him about $60,000, but allegedly owes him more than $300,000.

The state bar has filed disciplinary action including possible disbarment, against O'Quinn and Houston attorneys Benton Musslewhite and Newton Schwartz.

Alexander said the three attorneys allegedly used a network of runners- including McNeilly - to solicit clients at disasters.

Solicitation of cases is a violation of state bar ethics rules and could also violate state law.

Alexander said the affidavits submitted by McNeilly and others indicate case solicitation may be pervasive in the legal community. "It is far more severe than I anticipated." Alexander said.

Musslewhite has denied the allegations. Schwartz could not be reached for comment.

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APPENDIX I-10

(Excerpts from)

METROPOLITAN
The Houston Chronicle
April 28, 1987

State Bar probes 3 Houston lawyers, bribery allegations

By DIANNA HUNT

An East Texas man whose daughter died in a mobile home fire said he was paid $1,000 to sign away his rights to a lawsuit that later ended in a multimillion-dollar settlement benefiting his ex-wife and her attorney, according to sworn statements submitted to investigators.

Donald Keen, 27, of Henderson said a lawyer working with Houston attorney John O'Quinn also paid him $2,000 a few weeks later to "disappear" as a witness, according to the statements.

The allegations are among several charges of possibly unethical or

illegal conduct by O'Quinn and two other Houston lawyers under investigation by the State Bar of Texas.

The State Bar has filed suit seeking disciplinary action, including possible disbarment, of O'Quinn and attorneys Benton Musslewhite and Newton Schwartz. The lawyers have denied the allegations and are fighting the disciplinary action.

. . .

In 1984, O'Quinn filed a wrongful death suit in Matagorda County on behalf of Irene Hill over the death of her husband and children.

Keen said he was contacted in July 1985 by an attorney working with O'Quinn on the case who said Keen's ex-wife was unable to sign legal documents and that a guardian was needed for his daughter's estate.

After he agreed to sign the document, Keen said the lawyer offered to pay him a small amount of money then increased the amount to $3,000 which he paid in 30 $100 bills, according to Keen's statement.

The lawyer later returned to ask Keen not to testify, saying it could be detrimental to the case, the statement said.

He gave Keen $2,000 to take a "vacation" so he could not be contacted by defendants in the lawsuit, Keen's statement said.

The documents Keen signed, however, ultimately relinquished any claims he may have held in his daughter's death, said Keen's lawyer, Joe Shumate of Henderson.

State law prohibits tampering with or bribing a witness or potential witnesses.

Keen's affidavit was submitted to Houston private investigator Clyde Wilson, who has been hired by the State Bar's special prosecutor, attorney Tom Alexander of Houston, to investigate the cases.

The affidavits have been turned over to Harris County District Attorney John B. Holmes, Jr., who declined comment.

. . .

Alexander said the allegations are among several involving the three attorneys, who also allegedly used a network of runners or "ambulance chasers" to solicit clients at disasters such as airplane crashes.

Alexander said the investigation has been dubbed the "master of disasters," because of the tactics allegedly used to enlist clients.

The suit against O'Quinn accuses him of soliciting the parents of a soldier

who died in the 1985 crash of a charter plane in Newfoundland that killed all 258 soldiers aboard. O'Quinn has filed three suits stemming from the crash.

. . .

Alexander said the lawyers apparently used many of the same runners who operated a "network" and rushed to disaster scenes. They allegedly were paid according to the seriousness of the suits they uncovered, Alexander said.

"A broken-leg case was worth so much, a brain-damage case was worth so much, up to $100,00," Alexander said. "They were trading them kind of like they were trading pork bellies on the commodities market."

. . .

Among the cases O'Quinn has handled is the record $105-million judgment awarded in December to the family of a

chemical worker who died of leukemia as a result of exposure to toxic benzene.

The verdict against Monsanto Co. in Galveston is now the subject of an investigation by the FBI amid allegations of possible bribery of or tampering with a juror.

Musslewhite has called the State-Bar investigation a "witch hunt." Schwartz could not be reached for comment. O'Quinn's lawyer, David Berg, declined comment.

APPENDIX I-11

The Houston Chronicle
April 29, 1987

Houston lawyer denies charges of improperly soliciting clients

Houston lawyer Benton Musslewhite- one of three attorneys under investigation by a State Bar special prosecutor - denies allegations he has improperly solicited clients.

"I've never engaged in ambulance chasing." Musslewhite said Tuesday.

"My cases have come from lawyers, clients, legitimate organizations and those kinds of proper sources."

Musslewhite likewise said he has never been involved in any activity that could be construed as bribery of witnesses.

"I have not been accused of bribery by the bar association, and I'm

certainly not guilty of bribery," Musslewhite said.

An East Texas man has said in a sworn statement that he received $5,000 from an attorney working for lawyer John O'Quinn, who also is under investigation by the State Bar's special prosecutor, Tom Alexander of Houston.

Donald Keen, 27, of Henderson says he received $3,000 to sign away his rights to a lawsuit that later ended in a multimillion-dollar settlement benefiting his ex-wife and O'Quinn.

Keen said he also was paid $2,000 to "disappear" as a possible witness in the suit.

State law prohibits tampering with or bribing a witness or potential witness.

The State Bar has filed suit seeking disciplinary action, including possible

disbarment, against Musslewhite, O'Quinn and Houston lawyer Newton Schwartz.

APPENDIX I-12

(Excerpts from)

Houston Chronicle
May 28, 1987

Bar files 2nd suit against local laywer

By Bonnie Britt

The State Bar of Texas has filed a lawsuit seeking disciplinary action against Houston attorney Benton Musslewhite for allegedly using runners to solicit clients.

The lawsuit filed in a state district court in Houston on Wednesday, asks that Musslewhite be "disbarred, suspended and reprimanded." It is the second lawsuit filed by the bar alleging improprieties by Musslewhite.

Musslewhite could not be reached for comment but has previously denied any wrongdoing.

The suit alleges that at least seven non-lawyers recommended employment of

Musslewhite and attorney John M. O'Quinn to people who had not sought advice on hiring a lawyer.

Musslewhite and O'Quinn paid the runners for "recommending and securing" employment, according to the lawsuit. It further claims that fees were promised or paid to the runners.

Such acts constitute professional misconduct under State Bar rules.

"The accusations against me are untrue garbage," O'Quinn said.

The lawsuit was filed by Steven Smoot, first assistant general counsel to the State Bar, and Tom Alexander, special prosecutor in the cases against Musslewhite, O'Quinn and Newton Schwartz.

A lawsuit seeking disciplinary action was filed against Schwartz in January but has not yet to go to trial.

Alexander said attorneys will ask that the latest case against Musslewhite be tried quickly, as is allowed in disciplinary actions.

"This case is the result of months of investigation and could not have been filed without the help of Clyde Wilson," Alexander said.

Wilson, a private investigator, has been working for the State Bar in the case without pay.

The latest lawsuit also claims that Musslewhite arranged to split his attorney fees with O'Quinn in exchange for O'Quinn's financial backing of Musslewhite's practice.

O'Quinn would not work on the case and took the money without the knowledge and consent of the clients, the suit says.

State Bar rules label such acts as misconduct.

APPENDIX I-13

The Houston Post
May 29, 1987

By John Mecklin
and Hope E. Paasch

Allegation of jury tampering untrue, sources report

Claims against lawyer in Monsanto case unraveling; confusion with other trial cited

Widely reported allegations that prominent Houston attorney John M. O'Quinn was involved in jury tampering in a $107 million federal lawsuit appear untrue, many figures involved with that lawsuit agreed Thursday.

The allegations, and a purported investigation of them by the FBI, were described in March by several Texas publications, including The Houston Post. The allegations concerned a federal lawsuit in Galveston that resulted in a $107 million jury verdict against the Monsanto Co.

It was reported that FBI agents questioned jurors who returned the verdict to determine if attorneys tampered with or bribed the jury panel.

One of the jurors said he told agents he was never approached by attorneys in the case, and did not know that any other juror had been approached. . . .

Related to Alexander's investigation of O'Quinn is a state bar disciplinary action lawsuit filed Wednesday against Benton Musslewhite, a Houston attorney.

Alexander was appointed by the bar to investigate allegations of wrongdoing by O'Quinn, Musslewhite and attorney Newton B. Schwartz.

Wednesday's suit alleges Musslewhite and O'Quinn engaged seven people to solicit clients for their law practices, a violation of bar rules.

The suit also claims O'Quinn financed Musslewhite's practice in exchange for a percentage of client fees on some cases, without the consent of the clients and without O'Quinn's taking any responsibility for the cases.

Musslewhite said those charges are false. He acknowledged that O'Quinn has financed some of cases for him, but always has either worked or been expected to help out on those cases.

APPENDIX I-14

(Excerpts from)

The Houston Post
May 23, 1987

Probe of Houston lawyers draws sharp criticism

Charges of 'runaway prosecutor' and 'vigilante' tactics follow investigation

By Fred Bonavita
and John Mecklin

AUSTIN - An investigation of three Houston lawyers in connection with alleged soliciting of clients has been sharply criticized for "vigilante" tactics and for being in the hands of a "runaway prosecutor," The Houston Post has learned.

In remarks to the executive committee of the State Bar of Texas Thursday, Justice Franklin Spears of the Texas Supreme Court said he was "raising the caution flag" over the handling of the probe by a Houston

grievance committee of the State Bar of Texas, including the use of a special prosecutor and investigator in the case.

Jerry Lastelik of Dallas, chairman of the executive committee, charged the investigation was being handled by a "runaway prosecutor" who was employed by the Houston grievance committee and not by the state bar.

Bill Whitehurst of Austin, out-going president of the state bar, agreed with Lastelik's characterization of the prosecutor and added that the decision by the Houston grievance committee to solicit private funds to pay for an investigation gives the appearance that "vigilante groups are financing the investigation."

But Larry Doherty of Houston, chairman of the District 4C Grievance Committee, reacted indignantly to the

bar officials' statements and countered that they are trying to "stymie" the local probe of alleged wrongdoing by the three Houston lawyers.

"This stinks!" Doherty said of the comments at the executive committee meeting. "This whole (expletive) thing stinks!"

Tom Alexander, the special prosecutor hired to investigate the three attorneys, said Friday the criticism from Austin "kind of rankles" him. . . .

The Supreme Court, which approves state bar expenses, earlier this month refused to authorize paying Alexander up to $200,000 to act as a special counsel in the case. The court, in an 8-0 ruling not signed by Chief Justice John L. Hill, said there was no reason the state bar's general counsel could not handle the prosecution but that

Alexander could serve without pay, if he wanted.

Alexander was asked by the Houston grievance panel to look into allegations of wrongdoing against Houston attorneys Benton Musslewhite, John O'Quinn and Newton Schwartz. Alexander hired Investigator Clyde Wilson to probe the charges.

Since then, the inquiry has gained widespread publicity, spinning off allegations concerning eight other attorneys and two state district judges from Houston. Those allegations have been referred to the Harris County district attorney's office and the state bar.

One of judges, Family Court Judge Allen Daggett, already has criticized Wilson, asking "who appointed Mr. Wilson to be watchdog of the bar?" Wilson and Daggett are scheduled to

meet next week over their differences.

Doherty confirmed Friday that his grievance committee, by an 11-0 vote, decided Wednesday night to authorize Alexander to open a special bank account and solicit private contributions to pay Wilson's fees. Doherty called the move a "vote of confidence in Tom Alexander."

In his comments to the executive committee, Spears said, "I'm only raising the caution flag to tell you that this thing can get sticky and it can get messy, and it can involve pitting the court against the bar. If that's what you want, that's it."

He pointed to recent newspaper accounts of comments by Alexander concerning the investigation and told the bar officials: "I get the feeling that Tom Alexander has taken over-that he's going to do what he wants to

do, regardless of what's right or what the bar wants done or anybody else."

The judge said the court was "getting pressure" from both sides in the case and said he does not want it to "blow up."

Lastelik told the judge the state bar has no control over the situation since it had not hired Alexander or Wilson. Lastelik said many people in Houston view Alexander as "a runaway prosecutor."

Agreed Whitehurst: "We do have a runaway prosecutor down in Houston who is holding press conferences and . . . is trying this case in the papers in the name of the State Bar of Texas."

He suggested Laselik meet with Doherty and Alexander and suggest the press conferences stop.

On the issue of press coverage, Alexander said, "Certainly, it's no

solution to the bar's problems that we keep the bar's problems in secrecy."

He added, "The way I feel about that is the judges and lawyers ought to be subject to the scrutiny of the press. I've only answered the questions the press has asked me. An active, investigative press is the strongest deterrence I know to misconduct by anybody.

Whitehurst went on to tell the board: "The other matter that's coming up - and get ready - is this Clyde Wilson matter. That's getting totally out of hand."

Pointing to the local grievance committee's decision to solicit funds to pay Wilson's fees, Whitehurst said: "It's going to come out - or the appearance will be - that vigilante groups are financing the investigation of lawyers for the grievance process."

But Wilson said the decision to allow private financing of the investigation came about only after the Supreme Court cut off funding from the state bar.

He said it appeared to him the Supreme Court's decision to cut off funding was an attempt to silence the investigation. "Well, we're not that easy to shut up," Wilson said.

"If they think they're going to exert any influence on me, or cover anything up, they're sure barking at the wrong dog," Wilson said. . . .

Wilson said this week's comments from Austin only made him more determined to continue the investigation and he intends to talk to the press at his own pleasure. "No, I'll talk to them (reporters) whenever I damn well feel like it. I think the people of Harris County are entitled to

know who the bad apples are."

Doherty charged the hierarchy of the state bar has done its best to thwart the local probe of the three lawyers, including firing the first lawyer and investigator hired to probe them.

He singled out Steve Peterson, general counsel of the state bar, for specific criticism. Peterson's office, declined comment.

"Somebody is trying to cover up for some lawyers who have money enough," an irate Doherty said.

"If I want these people in Austin interfering with our investigation, I'll ask for it!"

Doherty said it was only because his grievance committee "reached out and sought outside counsel and an outside investigator" that it has been able to proceed as far as it has with the probe.

"They need to leave us alone!" Doherty said.

APPENDIX I-15
(Excerpts from)
Texas Lawyer
June 1, 1987

Probe Draws Officials' Ire

By Mark Obbie
and Robert Elder Jr.

Denounced by State Bar officials and a Supreme Court justice as a "runaway prosecutor," a probe of Houston lawyers and judges has come under increasing fire from several quarters.

But supporters of the controversial investigation have responded with charges of their own, claiming some State Bar leaders fail "the smell test" by seeking to cripple the inquiry rather than tackling a significant and sensitive disciplinary problem.

Among recent developments in a group of related cases:

Bar leaders lashed out at the conduct of special prosecutor Tom Alexander and private investigator

Clyde Wilson, accusing them of overstepping bounds set by Bar rules and by the two grievance committees requesting their help.

Supreme Court Justice Franklin Spears, in what he later acknowledged was a "subliminal message" to the Bar that it ought to dump Alexander and rely solely on the general counsel, dredged up a 24-year-old appellate opinion in which Alexander was criticized for injecting prejudicial statements into a jury trial record.

Alexander and the Bar's first assistant general counsel, Stephen M. Smoot, filed a new disciplinary suit May 27 against Houston trial lawyer Benton Musslewhite for allegedly soliciting personal injury clients. Musslewhite denied the charges. The judge to whom the case was assigned randomly, 151st District Judge Alice

Trevathan, is married to attorney Richard Trevathan, who represents two men implicated in Alexander's probe.

. . .

The investigation into solicitation of personal injury cases, originally dubbed the "masters of disasters" investigation, first resulted in disciplinary suits against three Houston lawyers: John O'Quinn, Benton Musslewhite and Newton Schwartz.

Those suits, filed by the Bar's general counsel between October and February, were turned over to Alexander by the two grievance committees that voted in favor of the litigation.

Since Alexander and Wilson got involved in February, they have uncovered what they say is evidence of unethical or illegal behavior by at least eight other lawyers, including

evidence of extensive, systematic ambulance-chasing schemes. . . .

At the open meeting, a tape recording of which was played later for reporters, State Bar president Bill Whitehurst and Spears blasted Alexander and Wilson for investigating more than they were asked to do, for their comments to reporters and for contemplating a private funding arrangement for Wilson's fee.

"I'm only raising the caution flag to tell you that his thing can get sticky; it would get messy," Spears warned of Alexander's public comments about pending cases, adding that Alexander's probe has gone far beyond its original scope of disciplinary cases against three lawyers.

"I get the feeling that Tom Alexander's taking over {this investigation} and he's going to do

what he wants to do regardless of what's right or what the Bar wants to be done," Spears said. "I'm getting pressure from both sides on this. . . . I am literally in the middle of this thing. . . . You've got a runaway prosecutor down there trying cases in the press."

Whitehurst agreed with the "runaway prosecutor" characterization and cautioned further that a plan to pay Wilson from private donations - to replace the Bar funds initially approved by the board and then vetoed by the Supreme Court - is "fraught with all kinds of appearance problems."

"There's going to be the appearance of vigilante groups financing investigations of lawyers for the grievance process," Whitehurst said.

. . .

"I think they stink," Wilson said. "I'm beginning to question if this is not one of the biggest coverups I've ever seen."

Two judges have been named as subjects of criminal probes sparked by Wilson's work. But, despite the general belief that they are spin-offs from the Bar probe, their cases' links to the original Bar investigation are tenuous at best.

. . .

But Marian Rosen, who said she was acting on Daggett's behalf as a friend and not as an attorney, told reporters "this whole thing has gotten out of hand."

"I understand nobody has retained Mr. Wilson at all," Rosen said, calling Wilson and his probe "a self-styled investigator or inquisition" of judges.

As to Justice Spears' suggestion

that Alexander is unfit to perform as a special prosecutor of the Bar, the justice told board members at the May 21 meeting to "jot down a citation." He revealed no more about the case at the time, but acknowledged later than an attorney reminded him of the 1963 San Antonio Court of Appeals decision that was highly critical of Alexander.

Alexander admitted he "said some things in the case that I shouldn't have said," and called the case a "severe dog-fight." But he questioned what relevance the case could have more than 24 years later.

In that decision, penned by Judge Jack Pope, later a Supreme Court justice, Alexander was chastised for riddling the record of a personal injury trial with prejudicial statements with a strategy that

"violates professional standards and counsel's duty to the court."

APPENDIX I-16

(Excerpts from)

The Houston Post
October 21, 1987

Ex-associates say O'Quinn paid solicitors

'Runners' brought Houston lawyer work, they claim

By John Mecklin

Former associates of prominent Houston attorney John M. O'Quinn contend he routinely paid "runners" thousands of dollars to solicit legal work for him, according to sworn affidavits.

One affidavit claimed O'Quinn, known for high-dollar settlements and successes in personal injury cases, attempted to set up an organization to solicit legal cases from the families of 248 American soldiers killed in a December 1985 air crash in Gander,

Newfoundland. . . .

O'Quinn also has appealed trial court rulings in the disciplinary action to the First Court of Appeals. Further trial court action has been stayed pending disposition of the latter appeal.

Tom Alexander, a special prosecutor handling disciplinary actions against O'Quinn and attorneys Benton Musslewhite and Newton B. Schwartz, said he filed the sworn affidavits along with his response to the Supreme Court "to show what the conduct has been and that it is continuing. . . .

David Berg, one of several attorneys defending O'Quinn in the disciplinary suit, said a gag order prevented him from commenting. But Berg did say, "Other allegations (against O'Quinn) in the past have proved false, and you have to go a long way to find a client

who would complain against John O'Quinn."

Berg apparently was referring to published allegations that O'Quinn had been involved in jury tampering in a $107 million federal lawsuit. Those allegations later were found to be false. . . .

In another affidavit, Mary L. Market, a former legal secretary for O'Quinn, contended the cases that runners solicited for O'Quinn were "too numerous to recall," although she felt she could document some of them from records.

She said O'Quinn told her to ask runners to send invoices for "investigative fees" to the law firm.

. . .

APPENDIX I-17

(Excerpts from)

The Texas Lawyer
November 2, 1987

Bar dumps Alexander

Dissenters Say O'Quinn Case Doomed Without Prosecutor

By Robert Elder Jr.

After nearly a year of acrimonious debate, the State Bar board of directors has dismissed the special prosecutor in the Bar's suits against three Houston plaintiffs' lawyers.

Board members said their Oct. 23 vote was intended to get the pivotal case against John O'Quinn off dead center, in view of the stay that has blocked O'Quinn's disbarment trial because of a challenge to the legal status of Bar special prosecutor Tom Alexander. . . .

Leaving the case to the Bar's

general counsel, they argued, may bring the Bar to a humiliating courtroom defeat at the hands of O'Quinn's five-man team of top Texas litigators.

Although most Bar officials said it was nothing personal against Alexander, several board members who gave accounts of the Bar directors' 90-minute closed-door debate at the meeting in Bryan said the decision to dump Alexander stemmed in part from his high-profile barratry investigation into solicitation of personal injury plaintiffs. . . .

Although the 1st Court of Appeals in Houston did not indicate the reason for its stay, board members said removing the issue of special prosecutor would get the case moving again.

Normally outspoken board members closed ranks after the meeting as the board tried to put the controversy over

Alexander behind it.

Even Alexander, whose investigation expanded beyond the original three targets to become the most notorious in the Bar's history, said his work is done and the Bar's office of general counsel can handle the so-called "Houston solicitation cases."

. . .

Alexander said he has turned over the results of the investigation he and Wilson conducted to the state's unauthorized practice of law committee, an arm of the Supreme Court, the appropriate Bar grievance committees and the Harris County district attorney's office.

The final tally: "about 12 individuals involved," Alexander said.

. . .

The Supreme Court on May 5 denied a Bar request to pay Alexander up to

$200,000 for his work. In the court order, Justice Franklin Spears said the newly expanded general counsel's office could handle the investigation and that there was no reason to alter the "long-outstanding policy" of not paying outside counsel for disciplinary matters.

Alexander had agreed to work for nothing.

The disbarment suit against O'Quinn hit a roadblock Sept. 4 when the 1st Court of Appeals temporarily stayed all trial court proceedings in the 189th District court of Judge Richard Millard until it ruled on whether Alexander could continue as special prosecutor.

O'Quinn's attorneys had challenged Alexander's status as special prosecutor, saying only the Supreme Court can appoint such a position. But the appeals court did not cite that or

any specific reason for its stay order.

Board member Thomas Conner of Houston said the dismissal was necessary because "thespecial prosecutor has become the central issue instead of the prosecution of those Houston cases."

"It had come to a complete halt," Conner said.

. . .

The resentment over Alexander tactics first publicly surfaced at a executive committee meeting May when then-president Bill Whitehurst and Justice Spears ripped into Alexander for investigating more than he was asked to do and for speaking freely to reporters.

Spears said Alexander was a "runaway prosecutor . . . trying cases in the press."

Board members said the closed-door

debate made it clear that some members still resented Alexander's personal style and felt that Alexander was not responsible to the executive committee by talking freely about the case and going outside the scope of the original investigation. . . .

Board members who described the executive session also said Bar general counsel Steven Peterson "swore up and down," as one member put it, that his office could win the Bar's case against O'Quinn.

When asked directly by one member whether he had opposed the appointment of Alexander from the start, Peterson said yes, the members said.

During a July pre-trial hearing in the Houston trial court, Doherty testified about a proposed Bar settlement offer to O'Quinn. Although Doherty and general counsel Peterson

disagreed over who broached the offer to O'Quinn's attorneys, the offer apparently was a public reprimand and an agreement to testify for 18 months in any suit against Musslewhite and another, unnamed lawyer.

Peterson said there was some talk among Bar officials of "a more limited punishment" for O'Quinn but that was before the Clyde Wilson investigation was completed."

Also unresolved is the role of Attorney General Jim Mattox, who filed a brief with the 1st Court of Appeals Sept. 25 arguing that the State Bar's appointment of a special prosecutor violates the law and the Texas Constitution because the AG is the exclusive representative of state agencies in civil litigation. . . .

Alexander also was removed from the disciplinary suits against Musslewhite

and Schwartz. Both defendants face a scheduled Nov. 9 trial in Houston before visiting Judge Solomon Cass of San Antonio.

Schwartz is charged with four counts of misconduct, including improper withholding money from a settlement and charging excessive interest on loan to client.

Musslewhite has not accepted a settlement offer from the Bar that calls for one year's probation and three years' suspension. Schwartz, who is represented by Edward Murr, name partner at Wright & Payton, said Oct. 26 the Bar has not offered him a settlement.

Musslewhite said Oct. 28 he will file the same motions as O'Quinn, asking Judge Casseb to stay the trial pending Supreme Court ruling on the constitutionality of the State Bar

rules. O'Quinn has argued to the Supreme Court that the Bar's rules banning solicitation as an infringement of commercial from speech rights. Millard, the trial judge hearing O'quinn's cases, had rejected those arguments as well as the challenge to Alexander's status and had set O'Quinn's trial for Oct. 19 before the stay was entered.

Musslewhite said he will have a lawyer lined up before pre-trial hearings.

Schwartz, Musslewhite and O'Quinn were among the nine lawyers who negotiated a $180 million settlement in Agent Orange case in May 1984.

APPENDIX I-18

(Excerpts from)

The Texas Lawyer
February 8, 1989

Musslewhite Agrees To License Suspension

By Richard Connelly

Houston solo practitioner Benton Musslewhite agreed Feb. 1 to a 90-day suspension of his law license and three years' probation in connection with a variety of charges of professional misconduct, but he refused to admit any wrongdoing.

The agreement "is not an admission of guilt on the part of Benton Musslewhite - it's a compromise," said Musslewhite's lawyer, solo practitioner Ray Bass of Austin. "It's simply a way to bury the hatchet with the State Bar and allow him to get on with his business. . . .

Musslewhite appeared at a press conference called by Bass, but Bass advised him to refuse to answer questions on the merits of the case. Musslewhite, a prominent personal injury lawyer who is involved in suits over Agent Orange and the Bhopal chemical leak, did say the Bar's suit had "a devastating impact" on his practice.

"I know of cases I've lost because of it," he said. He added that he settled the case partly because of family considerations and an "unusually trying year coming up from the standpoint of scheduling {court appearances for clients}. . . As I told my attorney, I don't see how I could do both - fight the Bar and do the job I need to do on those {other} cases."

The agreement calls for the 90-day suspension to begin Nov. 1, although

Casseb could delay it until Aug. 1, 1989, if Musslewhite's caseload requires it, Bass said.

Steven Smoot, first assistant, general counsel for the Bar, signed the agreement but said Bar officials would not comment further. Tom Alexander, name partner at Alexander & McEvily and former special prosecutor for the Bar in the Musslewhite case, said he had proposed a one-year suspension instead of 90 days.

"I think one year would be more appropriate, but I can't criticize what's been done," he said.

The agreement includes a review of all of Musslewhite's current cases by Harley Hampton, name partner at Houston's Young & Hampton.

Hampton will decide if any current clients were gathered by improper solicitation, in which case Musslewhite

will forfeit any legal fees from that client. . . .

The agreement disposes of all charges against Musslewhite, including improper solicitation of clients, fee-sharing, ignoring cases and failing to return client phone calls. Musslewhite's cases are to be reviewed by an attorney who will decide if any clients were improperly solicited.

Musslewhite's settlement may open the way to settlement talks with Houston attorney John O'Quinn, who also is charged with improper solicitation. Although the O'Quinn case is the subject of a gag order, sources familiar with the case say they believed the Bar wanted to get the Musslewhite case out of the way before beginning serious talks with O'Quinn.

O'Quinn's high-priced defense team mounted a challenge to the

constitutionally of the Bar rules banning solicitation, and a similar move by Musslewhite may have played a part in the settlement talks, court documents showed. . . .

APPENDIX I-19

(Excerpts from)

The Houston Post
June 1988

2nd Agent Orange suit aims at improving relief

By Kathy Kiely

WASHINGTON - Houston attorney Benton Musslewhite, who has been active in the legal battle against manufacturers of Agent Orange, is making another attempt to win compensation for Vietnam veterans and their families who say they have been injured by the defoliant.

"I'm going after someone for wrongdoing my family," Kathryn Hartman, wife of Houston cancer victim Ronald Hartman, said of a lawsuit in her husband's behalf that Musslewhite announced Thursday at a Washington press conference.

Musslewhite represented 2,000

BEST AVAILABLE COPY

Vietnam veterans in an earlier Agent Orange case that resulted in a $180 million settlement.

He appeared undaunted by a Texas State Bar order, filed in an unrelated matter, that will force him to take a three-month hiatus from his law practice.

Hartman said he believes the lymphoma for which he is being treated with chemotherapy and the birth defects of his two children were caused by his exposure to Agent Orange during a tour of duty in Vietnam. . . .

Filing the new, class-action suit on Hartman's behalf will provide another avenue to improve the relief package for all veterans and the families of veterans affected by Agent Orange-related ailments, Musslewhite said.

"We're going to fight these chemical companies and the government in every

valley and hill until we get our day in court," he said.

Musslewhite, who like many advocates for Vietnam veterans believes the Agent Orange settlement is too small to accommodate the veterans and children believed to have suffered cancers and birth defects from exposure, had appealed his earlier case to the U.S. Supreme Court. . . .

In the meantime, Musslewhite said he believes he has good legal grounds to bring a new on behalf of veterans who did not manifest any signs of disease until after May 1, 1984. Musslewhite argues that they are not covered by the earlier judgment. . . .

Musslewhite wants to avoid U.S. District Judge Jack Weinstein, the Brooklyn jurist who is trying all the federal Agent Orange cases.

"I don't have to tell you what would happen if this case came to his desk," Musslewhite said.

He said he is likely to have a better shot of winning in Beaumont.

. . .

Musslewhite said he will be able to pursue this latest Agent Orange case despite an order from the state Bar of Texas placing him under three-year probation and giving him a 90-day suspension from his law practice.

APPENDIX I-20

(Excerpts from)

The Scotsman
July 16, 1988

Piper Alpha families advised to file claims in US courts

Punitive damages urged

By David Stewart

An American lawyer argued in Aberdeen yesterday that the families of victims of the Piper Alpha disaster should seek punitive damages in the state courts of Texas.

Mr. Benton Musslewhite, whose firm is based in Houston, said he believed that such courts would hear damages claims and talked of awards of up to $25 million (15 million pounds).

"The crucial thing to me, after our preliminary investigation, is that there is a need once and for all to impose punitive damages on these corporations in the North Sea and to

send a message: 'You better get safe.'

"The only thing they understand is the pocketbook. If substantial enough punitive damages are imposed on these corporations, they will have to say: 'We can't afford not to be safe. We have to get safe or we will be put out of business.' Then they will be safe, and only then.'

Mr. Musslewhite, who said he had come to Scotland after speaking to lawyers here by telephone, said he had considerable experience dealing with claims arising from North Sea accidents. He denied being an "ambulance-chaser".

He added: "I would stress that my team will not accept any cases except through Scottish or UK-based solicitors." . . .

Mr. Musslewhite insisted: "We are not the Bhopal brigade". Asked about

the possible level of settlements in Texas, he said that damages might be from $1 million to $5 million, depending on individual circumstances. But if gross negligence was proved then the jury could also award punitive damages of up to four times the original figure.

Mr. Musslewhite said that in a previous action after an accident at Great Yarmouth, his company achieved a settlement of $3 million for a client, compared with an offer of 50,000 pounds made on behalf of the company.

Questioned about his firm's percentage cut in such actions, he said that it would be fewer than 30 per cent and probably more than 10 per cent.

Texas state courts, he added, were open to foreign as well as domestic plaintiffs and litigation pursued

through state rather than federal courts was usually more successful.

The jurisdictional complexities and favorable punitive damages law make Texas the best place for suit to be filed by victims or victims' families of this tragedy," he said.

A spokeswoman for the Law Society of Scotland said that she could not comment on a particular firm, but if lawyers here decided that actions should be raised in the US, they would require someone in the US to act with them. . . .

. . .

APPENDIX I-21

(Excerpts from)

U.S. lawyer denies Texas barred him practicing

An American lawyer Mr. Ben Musslewhite - who last week promised to fight for huge damages for families of Piper Alpha victims - yesterday denied Press reports that he had been barred by the Texas legal authorities from practicing law. . . .

Mr. Smoot (of the Texas State Bar) said yesterday he would be filing a motion with the court this week to revoke Mr. Musslewhite's probation. If the motion is successful Mr. Musslewhite would be effectively barred from practicing law for two years.

Mr. Smoot pointed out that under the terms of the action, Mr. Musslewhite was not allowed to take on any new

clients either individually or as a member of a team.

He can still continue to refer clients to other lawyers but, having done so, must not then associate himself with the lawyers, said Mr. Smoot.

Mr. Smoot agreed that Mr. Musslewhite's arrival in Aberdeen last week prompted him to prepare the filing of the motion, as he believed he would be involved in representing new clients. . . .

"His name gets into the Press a lot," said Mr. Smoot. "He has traditionally been involved in handling personal injury cases." . . .

"In the US the bar is much more adversarial. It is not uncommon for them to shoot at a high-profile lawyer like myself," Musslewhite said.

"I don't know why they do this. It

could be greed or professional jealousy. I will let all of you draw your own conclusions."

"If I start replying to what they are saying now, all we will be doing is hurting the victims more and damaging the US legal profession. There has been enough damage done already."

"I thought we were here to try to do something to help the victims of the Piper Alpha. Solicitors in Scotland want my advice about various aspects of the law and these are matters which I think are important and should be discussed."

Mr. Musslewhite said he was considering "legal remedies" against at least one Sunday newspaper who he claimed had carried inaccurate reports about the disciplinary action.

"I think it is a disgrace for this kind of thing to be fought out in the

Press. You know, Occidental and McDermott are laughing into their beer about how these lawyers are fighting each other."

Mr. Musslewhite is due back in Aberdeen later this week.

APPENDIX I-22

The Houston Post
July 18, 1989

Statef Bar president to probe Houston attorney's conduct

Lawyer on disciplinary probation currently in Scotland discussing Piper Alpha case

Lawyer on disciplinary probation currently in Scotland discussing Piper Alpha case

By Bill Hensel Jr.
The Houston Post

The president of the State Bar of Texas said Sunday that Houston lawyer Benton Musslewhite will be investigated for possibly violating terms of his disciplinary probation with the bar.

Musslewhite, 56, has been in Scotland discussing potential lawsuits over the Piper Alpha oil platform rig explosion July 6.

"I am concerned about it and most certainly will look into the matter,"

said attorney James Sales of Houston, president of the state bar. . . .

Another lawyer who is overseeing Musslewhite's practice for the state bar said he, too, will look into Musslewhite's activities in Scotland.

Musslewhite earlier this year agreed to settle a lawsuit the bar filed against him alleging professional misconduct.

The settlement included his being placed on disciplinary probation for three years. . . .

Among the charges made in the bar's lawsuit was that Musslewhite had solicited lawsuits.

Musslewhite held a news conference Friday in Aberdeen to say he would attempt to have lawsuits stemming from the oil platform disaster heard in Texas courts. Musslewhite maintains Texas juries are more inclined to give

higher awards in personal injury cases.

He told Reuters over the weekend he was in Glasgow to meet with solicitors who invited him to work on the case. He declined to name the firms.

Houston lawyer Hartley, Hampton, who is monitoring Musslewhite's practice under terms of the settlement agreement, said he is launching his own investigation.

"I can't figure out what he is doing," Hampton said Sunday. "He cannot accept new cases, period. Even if he is meeting with solicitors, he can't do that under the order.

Reports of Musslewhite's actions are "disturbing," Hampton said.

Hampton said after he completes his investigation, he will report to state District Judge Solomon Casseb Jr., who siigned the settlement agreement

between the bar and Musslewhite.

Under the terms of the agrement, Musslewhite will be suspended from practice for a three-month period starting Nov. 1. That period can be delayed until August 1989 at Casseb's discretion.

Musslewhite lashed out Saturday at stories in Scottish newspapers that he was contacting families looking for business.

He told Reuters that, because of the way he has designed his practice, his suspension will not interfere with any cases he has been handling.

He did not say whether he personally would handle suits brought by survivors or relatives of the 166 men killed when the North Sea oil platform was engulfed by flames.

Musslewhite told Reuters he believes he could have won the Texas bar's cases

against him but agreed to the settlement so he could get one with his law practice.

The attorney, who had been facing possible disbarment in the disciplinary suit, is best known for his role representing Vietnam veterans in Agent Orange lawsuits against chemical manufacturers.

APPENDIX I-23

(Excerpts from)

Belfast Newsletter
July 19, 1988

Texas lawyer calls foul

An American lawyer who claimed he can win $1 billion damages for the families of Piper Alpha victims denied reports that he had been barred in the United States for professional misconduct.

Benton Musslewhite of Houston, Texas, yesterday described the report as rubbish.

. . .

He was "incensed" by a report in a Sunday newspaper, headlined "Barred lawyer courts Piper Alpha families".

"I am considering legal remedies. I am not barred from practicing law, and I am not courting the families.

"I have said publicly I would have no contact with them. I am working

through solicitors in Scotland," he said.

The newspaper claim that he was "suspended on probation for three years and barred from taking on any new clients" was false.

Mr. Musslewhite said the grievance committee of the Texas State Bar Authority had put him on probation for three years and imposed a 90-day suspension.

"It was an agreed judgment. There was no trial, no jury found me guilty of any specific act of misconduct."

He could continue to practice law, but could not take on new clients unless he referred them to another lawyer.

"It's correct to speak of them trying to put a spoke in my wheels. It could be professional jealousy. Whatever it is I am not going to lower

myself to the level of a battle of personalities."

He said he had won multi-million dollar damages against big insurance companies and corporations in the United States.

And he said the bar associations, which were packed with their lawyers, had been gunning for him for years.

He admitted that when he was put on probation he was deeply involved in fighting for Vietnam veterans who had suffered as a result of the use of the defoliant Agent Orange.

"It frankly meant that other cases were not proceeded with as fast as I would have liked.

"It doesn't have one bit of relevance to the Piper Alpha tragedy."

Mr. Musslewhite said he had discovered that an American law firm sent a copy of the judgment against him

to Scottish solicitors who passed it on to the Press.

"I think it's a disgrace for this kind of thing to be fought out in the Press. You know Occidental and McDermott are laughing into their beer about how these lawyers are fighting each other."

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Extract from
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Benton Musslewhite of Huston, Texas, yesterday described the report as rubbish.

He put it down to "professional jealousy" and said it was an attempt by a rival American law firm to "put a spoke in my wheel".

Occidental, the rig owners, and McDermott who built the rig would be "laughing into their beer about how these lawyers are fighting each other", he said.

Earlier Mr Musslewhite said on a television programme that the victims' families could receive £15 million each in compensation and punitive damages.

He was "incensed" by a report in a Sunday newspaper, headlined "Barred lawyer courts Piper Alpha families".

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Stricken oil rig agony goes on

Three more bodies from the Piper Alpha tragedy have been recovered Grampian police said last night.

This leaves 137 men still unaccounted for.

The bodies of 29 have been recovered so far and all but the last three have been identified.

Meanwhile Occidental, the owner of the stricken platform, said Red Adair's team of troubleshooters boarded the rig yesterday morning.

They attached a hose to one of the five blazing well-heads and started to pump in sea water in an attempt to douse the fire.

This operation lasted several hours.

The next stage of capping the well is to pump drilling mud or cement into the well head to shut it off completely.

APPENDIX I-24

(Excerpts from)

Glasgow Herald
July 21, 1988

Rig claims put US courts to the test

By ROS DAVIDSON

THE widows and children of the Piper Alpha victims might face "serious problems" in securing compensation in US courts from the oil operators and designers.

Their claims against American multi-nationals could be thrown out because the victims were not US citizens, according to Professor David Robertson, an authority on compensation and maritime law at the University of Texas.

. . .

Yet New York lawyer Stuart Speiser is confident that the cases could be brought in Texas or Louisiana and

settled within two years. In the US Mr. Speiser represents most of the families of the 45 men killed in the 1986 Chinook helicopter crash.

He disagrees with concerns that Piper Alpha's suits could be thrown out by emphasising that foreign oil rig victims have won in state courts on two occasions. Mr. Speiser handled both cases. He filed law suits in Texas and Louisiana for families of the 84 then killed when the Ocean Ranger rig capsized near Newfoundland in 1982. Some of the victims were British.

In the second disaster, he won settlements in under two years for relatives of the 81 killed when the Glomar Java Sea capsized in the South China sea in 1983. *

Piper Alpha litigation would be expensive, Texas maritime lawyer Robert Chaffin warns that both sides' fees

could exceed $1m in the state courts. But he says the award could top $1bn because punitive damages are influenced by the profitability of the companies sued. He also defends American lawyers' high contingency fees by noting that he once secured a settlement for the family of a man killed in the North Sea in the 1970s that was 15 times higher than the company offer. He concludes: "Cases should be brought where the widows and children can get the most money."

Comment By Petitioner:

*Speiser was not himself involved in either one of these cases; his partner, Krause was. However, Musslewhite was on the plaintiffs' committee with Krause in the Ocean Ranger litigation and stayed with the non-settling plaintiffs, while Krause bailed out with the settling plaintiffs. Musslewhite later secured substantially

larger settlements for those who stayed with the case. As to the Global Java Sea, O'Quinn was lead counsel and the one who was primarily responsible for the settlement of that case. Apparently, Speiser for some reason resented Musslewhite and O'Quinn, because it was he who sent Musslewhite's probation judgment to the Scottish press).

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Extract from
Glasgow Herald

21 JUL 1988

Rig claims put US courts to the test

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THE widows and children of the Piper Alpha victims might face "serious problems" in securing compensation in US courts from the oil operators and designers.

Their claims against American multi-nationals could be thrown out because the victims were not US citizens, according to Professor David Robertson, an authority on compensation and maritime law at the University of Texas.

The outlook for Piper Alpha claims is better than for some other recent disasters, but Professor Robertson predicts that pertinent US law is too uncertain to say the odds for success would be particularly high. The potential size of the case might even force the US Supreme Court, the country's highest, to rule on the matter.

The compensation issue has become increasingly emotional for the relatives of the 166 victims. A number of American lawyers have visited Aberdeen in the three weeks since the rig exploded, one with a record of professional misconduct in Texas. And the Law Society of Scotland has publicly cautioned the families since US contingency fees are typically 33% to 40% of any award.

Yet Piper Alpha may become one of the biggest tort law suits in history. Even respected American lawyers suggest that compensation and punitive damages could reach $1bn in the US, where the legal system juries return notoriously high awards.

Lawyers say claims should be filed in Texas or neighbouring Louisiana because their "populist" state laws favour disaster victims. America's federal courts have routinely refused to hear cases brought by foreigners, as in India's Bhopal disaster, and would probably return most Piper Alpha suits to the Scottish and English courts. The state strategy appears feasible, because the rig operator, Occidental Petroleum, two of its partners, and the designers of both the platform and the topside do much of their business in such oil-producing states.

But Professor Robertson, who has written on jurisdiction for the University of Oxford's Law Quarterly Review, recommends caution. He believes that although current doctrine suggests Piper Alpha would be a state issue, the interaction between the two tiers of the US legal system in such offshore disasters is complex and increasingly unstable. He also says that Piper Alpha might not seem to be a question of maritime — and therefore federal — law because it is a fixed platform. Arguments to the contrary, however, are "plausible."

Because of the money potentially involved, Piper Alpha could be the case that prompts the US Supreme Court to rethink compensation for foreign disaster victims, Professor Robertson suggests. Today's high court is conservative and pragmatic. He concludes: "Most of the injured are not US citizens so there are serious jurisdictional problems."

Yet New York lawyer Stuart Speiser is confident that the cases could be brought in Texas or Louisiana and settled within two years. In the US Mr Speiser represents most of the families of the 45 men killed in the 1986 Chinook helicopter crash.

He disgrees with concerns that Piper Alpha's suits could be thrown out by emphasising that foreign oil rig victims have won in state courts on two occasions. Mr Speiser handled both cases. He filed law suits in Texas and Louisiana for families of the 84 men killed when the Ocean Ranger rig capsized near Newfoundland in 1982. Some of the victims were British.

In the second disaster, he won settlements in under two years for relatives of the 81 killed when the Glomar Java Sea capsized in the South China sea in 1983.

Piper Alpha litigation would be expensive. Texas maritime lawyer Robert Chaffin warns that both sides' fees could exceed $1m in the state courts. But he says the award could top $1bn because punitive damages are influenced by the profitability of the companies sued. He also defends American lawyers' high contingency fees by noting that he once secured a settlement for the family of a man killed in the North Sea in the 1970s that was 15 times higher than the company offer. He concludes: "Cases should be brought where the widows and children can get the most money."

APPENDIX I-24

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APPENDIX I-25

(Excerpts from)

THE TEXAS LAWYER
August 1, 1988

Two Disasters Spawn Barratry Allegations

Bar Sends Investigators
to Scotland, Brownville

BY ROBERT ELDER JR.

Prompted by reports of lawyers improperly soliciting clients in the immediate aftermath of two recent disasters, the State Bar has sent an investigator to Brownsville and plans to dispatch its general counsel to Scotland in mid-August.

. . .

And general counsel Steven Peterson will travel to Scotland to investigate the role of Benton Musslewhite and other Houston lawyers in lining up

clients from the Piper Alpha oil rig disaster, Sales said July 27.

Although neither the Bar nor Musslewhite's court-appointed overseer has talked with Musslewhite about his activities in Scotland, the Bar has been granted a Sept. 19 hearing in 270th District court in Houston to discuss Musslewhite's activities.

The hearing, ordered by visiting state District Judge Solomon Casseb Jr., was requested by the Bar and Houston lawyer Hartley Hampton. Casseb appointed Hampton, name partner in Young & Hampton, to oversee Musslewhite's compliance with the three-month suspension of his law license - to begin Nov. 1 - and three year's probation.

Musslewhite agreed to the settlement Feb. 1 in a disciplinary suit stemming from previous allegations

of improper solicitation of clients, Musslewhite admitted no wrongdoing when he settled the case.

Sales said the Bar would investigate reports from Scotland lawyers and news media that there was a "ring" of Houston-area lawyers soliciting clients from the July 6 oil rig explosion, which left 167 dead.

"There is a suggestion that more lawyers from Houston are involved than there appeared to be at first blush," Sales said July 22.

Sales said information he received from Scottish lawyers shows that the same group of lawyers allegedly soliciting Piper Alpha suits "seemingly has tentacles that may reach back to prior incidents in the U.K. North Sea area." . . .

. . .

Sales, immediately after the

Bar's executive committee meeting on South Padre Island July 22, said "time is of the essence" in the North Sea investigation. He said July 27 he would have preferred to send Peterson to Scotland the week of July 25, but the general counsel first must attend the American Bar Association's conference in Toronto before heading overseas.

Hampton said he planned to take Musslewhite's deposition and begin his own investigation, which will "overlap" with the Bar's.

Hampton said he had not had any contact with Musslewhite since news media reports of the Piper Alpha cases, although, he added, he had been on vacation, and missed telephone calls from Musslewhite.

Hampton said press reports from Scotland and England about Musslewhite are "most discouraging and troubling."

Wire service reports from Scotland said Musslewhite on July 15 announced he would try to have suits stemming from the oil rig explosion heard in Texas.

Depending on the evidence heard Sept. 19, Hampton said, either he or the Bar could move to have Musslewhite's license revoked.

Sales said that if news reports from Scotland prove to be true, then "in retrospect" the Bar's settlement with Musslewhite was "too lenient." Sales said he has ordered Peterson and first assistant general counsel Steven Smoot to "marshall all the evidence we can" for the Sept. 19 hearing.

If the evidence shows Musslewhite violated the terms of his suspension and probation, Sales said, you can bet your sweet bippy" the Bar will move to ask for punishment stronger than the

Bar's settlement agreement.

Under the terms of Judge Casseb's settlement order, Musslewhite cannot accept any new clients before the suspension starts Nov. 1.

. . .

APPENDIX I-26

(Excerpts from)

THE NATIONAL LAW JOURNAL
August 8, 1988

North Sea Visit Spurs Probe of Texas Lawyer

BY GARY TAYLOR
Special to The National Law Journal

HOUSTON - Alarmed by news reports from the scene of a North Sea disaster, the State Bar of Texas has requested an "unusual" hearing to determine if attorney Benton Musslewhite has violated the settlement terms of his disciplinary dispute.

At the Sept. 19 hearing, the bar intends to question Mr. Musslewhite about his activities in the aftermath of the July 6 Piper Alpha oil rig explosion that left 166 dead.

"It's an unusual proceeding," says Steven Smoot, the bar's first assistant general counsel. "I've never conducted

one before."

Technically a motion for an oral hearing, the procedure is filed as part of the bar's litigation against Mr. Musslewhite. That disciplinary action was settled in February, when Mr. Musslewhite agreed to a 90-day suspension of his law license.

Mr. Smoot says the Houston solo practitioner also agreed to accept no new employment by clients, but he can refer cases to other attorneys. Violation of the terms could mean a three-year suspension or even disbarment for the well-known litigator, who established his reputation representing Vietnam veterans in the Agent Orange cases.

Neither Mr.Musslewhite nor his attorney, Ray Bass, an Austin solo practitioner, could be reached for comment. Both attorneys have said they

believe the agreement allows Mr. Musslewhite to refer clients to other lawyers and then work with those lawyers on the cases. Mr. Musslewhite has been in Aberdeen, Scotland, according to the press reports that captured the state bar's attention.

Those reports described a July 15 news conference during which Mr. Musslewhite said he would try to have Piper Alpha lawsuits tried in Texas courts, where juries give higher awards. But he also told reporters that he had redesigned his practice so his suspension would not interfere with cases like these.

"We want to hear his explanation," says Mr. Smoot. "The judgment speaks for itself. It says he shall accept no new employment by clients. We want to know who is on his team of lawyers."

That team was described in Scottish

newspaper ads and in letters allegedly drafted by Mr. Musslewhite to attorneys there. Those letters boast about the creation of a team of attorneys experienced in handling cases from mass disasters.

At his press conference, Mr. Musslewhite told reporters he was meeting with Scottish solicitors to discuss the Piper Alpha litigation potential, which could total $1 billion worth of liability. He said he'd been invited to work on the cases by Glasgow attorneys. In subsequent newspaper interviews he "lashed out" at reports that he had been contacting families about possible cases.

Mr. Musslewhite first attracted the Texas bar's disciplinary attention when it launched an investigation into solicitation of lawsuits and the use of

runners - or non-lawyers - to enlist victims of disasters. He was one of several attorneys accused of the practice by the bar. (NLJ, 6-8-87.)

The bar says it also wants to question Mr. Musslewhite about a lawsuit filed by him June 23 in Beaumont for an Agent Orange victim. Mr. Musslewhite has said that the Beaumont suit does not involve new clients.

. . .

APPENDIX I-27

Texas Lawyer
September 26, 1988

(Excerpts from)
MUSSLEWHITE DEFENDS OVERSEAS WORK

Disciplined Lawyer Says He Planned Referrals To O'Quinn

By Richard Connelly

Houston attorney Benton Musslewhite, prevented from taking new cases because of previous unethical solicitation charges, told a district judge Sept. 20 that he and an associate went to Scotland after a July 6 oil rig disaster and hired a public relations representative, held a press conference, wrote to two dozen Scottish solicitors and sent a mass mailing to every victim or family involved in the explosion.

But Musslewhite, a prominent solo practitioner, told visiting Judge Solomon Casseb, Jr. that he did not

violate probation terms barring him since Feb. 1 from taking on new clients. Instead, he testified, he was planning to refer any cases to Houston attorney John O'Quinn, another big-name personal injury lawyer facing unethical solicitation charges.

"I told [O'Quinn], 'You know I can't accept cases, but would you accept referrals?' and he said he would," Musslewhite testified. Definite financial arrangements were not discussed, he said.

Musslewhite also stressed that, even with the press conference and mailings to victims, there was no direct solicitation of prospective clients. "I said at the press conference that we agreed that the victims should not directly hire American lawyers and we would only take cases through Scottish solicitors," he said.

Musslewhite, working with Houston

solo practitioner Kelly Newman, never did get any cases from the Piper Alpha disaster, which claimed 166 lives. But his actions have triggered a State Bar effort to revoke his probation, in a hearing scheduled to continue Oct. 17.

. . .

Musslewhite had been charged with unethical solicitation and ignoring clients. He said at the time of the agreement that he was not guilty but accepted the terms in order "to get on with [his] practice".

In addition to the Pipe Alpha activities, the Bar's petition cited a June 22 press conference in Washington, D.C., where Musslewhite announced his involvement in new Agent Orange litigation.

But it is the activities in Scotland that most concern the Bar. First, assistant general counsel Steven Smoot

showed a videotape of Scottish television news' coverage of the July 15 press conference, which included a reporter's references to "the Bhopal Gang" and said, "The U.S. lawyers deny they are ambulance chasers".

Coverage in the Scottish media grew worse after someone, probably another attorney, made reporters aware of Musslewhite's disciplinary troubles in Texas, court documents said. News of the press conference reached the U.S. causing Bar officials to launch their investigation.

. . .

Musslewhite, who represented himself at the hearing, said he did not get involved with the Piper Alpha case until three days after the explosion. He said he returned home from vacation and found letters from a Scottish solicitor he was working with on an unrelated case.

Musslewhite said he called him about that case and the solicitor "volunteered that he had two cases from the Piper Alpha case and I expressed the belief there was a good chance those cases could be heard in Texas," Musslewhite said. He said he already possessed a ticket to England for an unrelated matter, but offered to move the trip up two days to meet with the Scottish solicitor.

. . .

Musslewhite complained during the hearing that Hampton, whose fees he is paying as part of the probation agreement, was not acting objectively, as a special master should.

"It's a matter of me paying for someone to investigate me and prosecute me." he said, adding the Bar should pay Hampton.

. . .

APPENDIX I-28

The Houston Post
October 18, 1988

(Excerpts from)

MUSSLEWHITE DISCIPLINARY HEARING BEGINS

By Brenda Sapino

An attorney for the state bar, which has alleged Houston personal injury lawyer Benton Musslewhite violated his disciplinary probation, said Monday he has no evidence Musslewhite directly contacted accident victims in Scotland.

Steven Smoot, legal counsel for the State Bar of Texas, said he has no evidence that Musslewhite ever contacted any victim or relative of a victim of the July 6 Piper Alpha oil platform rig explosion in the North Sea.

Smoot testified Monday during a hearing on the bar's request for visiting state District Judge Solomon Casseb Jr. to revoke Musslewhite's

disciplinary probation, an action that could prevent Musslewhite from practicing law for longer than a 90-day suspension set to begin Nov. 1.

The bar alleges that Musslewhite may have violated the terms of his probation when he went to Scotland to meet with solicitors.

. . .

Musslewhite said he had an arrangement to refer any litigation to Houston attorney John O'Quinn.

. . .

APPENDIX I-29

Houston Post
July 11, 1989

(Excerpt from)

LAWYER RECEIVES REPRIMAND IN SETTLEMENT OF STATE BAR SUIT

By John Mecklin

Prominent personal-injury attorney John M. O'Quinn received a public reprimand but no serious sanctions in the settlement of a widely publicized disciplinary lawsuit filed against him by the State Bar of Texas.

. . .

In an emotional interview Monday O'Quinn said he had been unfairly "dragged through the mud" during the bar's investigation and lawsuit, which were the subject of numerous news reports over a period of months.

"I'd like to say this: I think it was wrong for them (the bar and its attorneys) to try me in the press. I think a lot of things were said about

me that were false -- not think, I know (they were false)".

. . .

But the settlement's relatively mild disciplinary action contrasts sharply with early allegations by an attorney and a private investigator hired by the bar of widespread wrongdoing by O'Quinn.

From the start, the bar's investigation, which began in 1986, was surrounded by controversy.

The bar's board of directors took the unusual step of hiring Tom Alexander, also a prominent civil attorney in Houston, as a special prosecutor. Alexander inturn hired private investigator Clyde Wilson to pursue the investigation.

But then the State Supreme Court, which controls the bar's budget, refused to pay Alexander's $250,000 fee because there was no precedent for it.

And was details of Wilson's investigation began to leak into the press, some disgruntled bar officials publicly referred to Alexander as a "runaway prosecutor." They charged Alexander's investigation was being backed "vigilante" groups seeking to punish a prominent personal injury lawyer.

. . .

Alexander said, "I sincerely hope that this public reprimand and probation will deter others from the same sort of activity."

Still, Alexander added, "It's a wrist-slap."

David Berg, one in a team of attorneys who represented O'Quinn, retorted. "To the extent that the case was tried in the press by Tom Alexander, I think he (O'Quinn) has been punished quite enough, thank you."

. . .

Most recently, O'Quinn won a judgment of at least $600 million from Tenneco for an Ohio gas producer. Among numerous other multimillion-dollar cases, O'Quinn also was a member of the legal team that negotiated a $250 million settlement of the Agent Orange suit on behalf of Vietnam veterans.

APPENDIX I-30

Texas Lawyer
July 10, 1989

(Excerpts from)
O'QUINN BATTLES NEARING AN END
Truce With Bar Called a Matter of 'Economics'

By Mark Ballard and Robert Elder Jr

The legal cloud over John M. O'Quinn began evaporating when the noted Houston trial lawyer accepted a proposed settlement of his disbarment suit and the key witness in a jury tampering case recanted his allegations.

O'Quinn will not lose one day of practice under the deal, which had not been finalized by press time on July 6. But the State Bar of Texas board of directors on June 29 reportedly rebuked its general counsel, Steven D. . . . Peterson, for his handling of Texas' most celebrated disbarment suit.

Two members of the Bar's Grievance Committee 4-E said Peterson recommended a light penalty for O'Quinn because the Bar could not afford to fight O'Quinn's team of renowned lawyers, an outcome many predicted when the general counsel took over from a special prosecutor.

. . .

The Bar, which last year defeated O'Quinn's constitutional challenge of the Bar's anti-barratry rules, claimed in the disciplinary suit that O'Quinn had hired eight "runners" to solicit more than 100 personal injury clients.

Sometimes the runners dressed like priests or paramedics and slipped into hospitals to give prospective clients a brochure that outlined O'Quinn's most famous verdicts, according to court records.

The chairman of the grievance committee that agreed to settle the

case with O'Quinn, Harry A. "Red" Loftus, confirmed July 5 that the deal - subject to court approval - calls for O'Quinn to receive two years' probation and perform 100 hours of community service. Loftus, a name partner in Houston's Abramowitz & Loftus, stepped down July 1 as grievance committee chairman.

But one of O'Quinn's defense lawyers, who asked not to be identified, said he interprets the penalty to mean that probation lasts only until the 100 hours of community service is completed, and O'Quinn has two years to complete it.

. . .

Saying that Bar rules forbid him from commenting on grievance committee deliberations, Loftus confirmed the panel was motivated in part by lack of evidence and escalating costs.

Two other members of the grievance

committee, both speaking on the condition of anonymity, said the documentary evidence against O'Quinn contained what one member called "significant gaps." Plus, several key witnesses could no longer be located, the committee member said.

When Loftus presented the final draft of the settlement at its June 22 meeting, the grievance committee considered Peterson's assessment that the O'Quinn case would be difficult to win, the sources said.

"We were made to feel that we were somewhat handicapped in making the case against this guy [O'Quinn]," said one committee member.

Peterson had told the committee that O'Quinn had spent about $3 million on the case and that the Bar had spent up to $70,000, the two sources said.

"Steve told us, "I'll do what you all say but this guy can outspend the

Bar and I'm facing [five] high-powered attorneys," the panelist said.

"The bottom line is that it just came down to economics, agreed the other grievance committee member. "We more or less compromised. And rather than risk losing the whole case, at least with a probated sentence we could hold it over his head for a while."

. . .

The fallout over the settlement also played a large part in an unusual display of dissatisfaction with Peterson by Bar leaders.

At its June 29 meeting, the Bar's board of directors voted to give its top two executives, Peterson and executive Director Larry K. Montgomery, relatively modest raises.

. . .

And at least two of the directors who voted for the raise said the issue

upsetting some directors was the O'Quinn case and Peterson's role in the settlement.

"It's got a lot to do with it," said one member who approved the raise.

. . .

"In effect, O'Quinn has beaten the system," said William Key Wilde, who chaired the Bar committee that oversees the general counsel's office and initiated the O'Quinn prosecution in late 1986. At the time, Wilde, a Houston partner at Bracewell & Patterson, favored hiring a special prosecutor to handle the case.

"This [the settlement] was the sort of thing that we suspected would have happened all along", Wilde said July 6. "We never felt Steve Peterson was a match for the legal team O'Quinn was able to put together."

O'Quinn got a better deal than Peterson offered in January 1987,

when the Bar was considering whether to hire a special prosecutor. Wilde said.

At that time, O'Quinn had agreed to a public reprimand and to testify against Houston solo practitioners Benton Musslewhite and Newton B. Schwartz, two other lawyers then facing disciplinary suits, Wilde said. But the grievance committee, which had different members then, refused to approve that deal, he said.

"It seems to me ironic that Steve Peterson would say it was too expensive when Tom Alexander agreed to do this for free." Wilde said.

Alexander, a name partner at Alexander & McEvily of Houston, supervised the case for 10 months before the Bar board of directors fired him as special prosecutor in October 1987. Peterson retook control of the case at that point.

Not surprisingly, Alexander also was

critical of the pending deal in O'Quinn's case.

"To say that the State Bar cannot afford to prosecute John O'Quinn is to say the State Bar is pretty weak and maybe it does need legislative supervision." Alexander said July 5. The settlement "really makes a mockery of the State Bar rules."

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APPENDIX I-31

Texas Lawyer
August 14, 1989

(Excerpts from)
SCHWARTZ ACCEPTS 2-MONTH
SUSPENSION IN SETTLEMENT

By Richard Connelly

Houston solo practitioner Newton Schwartz has accepted a two-month suspension and a public reprimand to end the disciplinary suit brought against him by the State Bar, court documents show.

Schwartz, a prominent personal injury plaintiffs' lawyer accused of mishandling client funds and improperly financing litigation, finishes his suspension Aug. 30. The order containing the agreement was signed by visiting Judge Solomon Casseb of San Antonio on June 27.

. . .

The charges against Schwartz came

out of the high-profile "Masters of Disaster" investigation begun by the Bar in 1986. Although the investigation centered on personal injury lawyers accused of hiring runners to solicit cases from accident victims, Schwartz however was never charged with improper solicitation.

With Schwartz' settlement, the three disciplinary suits filed in the investigation have come to an end.

Houston attorney John O'Quinn's case garnered the most attention, because of his string of multi-million dollar verdicts, his star-studded defense team and his failed constitutional challenge to the Bar's anti-solicitation rules. O'Quinn, named partner in Houston's O'Quinn, Kerensky & McAninch, settled his suit June 30 by agreeing to a public reprimand, 100 hours of community service and reimbursement of $38,000 to the State

Bar for investigatory expenses.

The harshest penalty went to Houston solo practitioner Benton Musslewhite, like O'Quinn, accused of hiring runners. Musslewhite, who was also accused of fee-sharing and ignoring cases, initially settled his case Feb. 1, 1988, with a 90-day suspension to begin in November of that year. He was to take on no new clients before the suspension started, according to the agreement.

Nine months later, however, Casseb ruled Musslewhite had violated his parole and ordered a three-year suspension. The suspension has begun, although Musslewhite is fighting the ruling in federal court.

Casseb's order came after Musslewhite traveled to Scotland in the wake of an oil rig disaster. Musslewhite claimed he was conferring with Scottish solicitors and planned to

refer all cases to O'Quinn, but Bar officials said his actions violated his parole condition barring new business.

Schwartz, Musslewhite and O'Quinn were members of the plaintiffs' management committee in the Agent Orange litigation of the mid-1980s. Schwartz and O'Quinn also were among the plaintiffs' lawyers who helped finance the massive, multi-district case that blamed chemical manufacturers for the ailments suffered by Vietnam veterans who came in contact with the toxic defoliant.

APPENDIX I-32

Houston Post
May 10, 1984
(Excerpts from)

CITY LAWYER HERO IN AGENT ORANGE

The document that changed Houston lawyer, Benton Musslewhite's life--and now will affect the lives of possibly as many as 100,000 Vietnam veterans as a result -- was a memo concerning a 1965 meeting between representatives of seven chemical companies.

The gist of the memo, Musslewhite reasons, was that those seven chemical companies had realized the defoliant Agent Orange they were producing for the U.S. government contained dioxin, one of the most toxic substances known to man.

What caught his attention was that those representatives decided not to

tell the Pentagon what they had learned.

As a result, seven more years passed before the government halted the spraying of Vietnamese jungles with millions of gallons of the chemical.

"I just said, 'I can't believe it. I can't believe anyone would do this, would allow that to continue knowing what they did,' and I just couldn't say no once I knew that." he said.

Musslewhite called the lawyer for the veterans group Citizen Soldier in New York City back and agreed to accept calls from veterans who believed the illnesses they suffered stemmed from Agent Orange.

On Sunday, Musslewhite and seven other lawyers acting as a master committee negotiated the largest settlement in a products liability case in this nation's history -- one that could bring those veterans as much as

$750 million.

Without Musslewhite, though, sources close to those negotiations and even some committee members readily concede, those veterans might never have gotten a penny.

"Musslewhite has definitely been one of the most active and most involved in the case." said Houston lawyer John O'Quinn, another member of the committee.

"Benton has persevered. He all along has been one of the three that has kept the ship afloat," conceded Newton Schwartz, the other Texas attorney on the panel. "That has been his role through thick and thin."

It was Musslewhite who organized 1,500 veterans -- including almost 400 Texans -- and filed their claims. It was Musslewhite who argued strategy with a group of New York and Rhode Island lawyers originally assigned to

monitor claims from across the nation.

It was Musslewhite who recruited O'Quinn and Schwartz and the money they had available to the eight-member panel when the original group of New England lawyers almost gave up.

O'Quinn -- by his own estimate-- has contributed $300,000 to $400,000 excluding his own time. Schwartz says he has tossed in $150,000 cash and up to a quarter of a million in time and research.

"Benton has probably worked on this himself for 5,000 or 6,000 hours, almost steady on it for four years," Schwartz said.

Musslewhite estimates his own contribution at almost a quarter of a million dollars -- so much that rent on his own law office in the 609 Fannin Building is "a few months behind," he says.

He doesn't own a home and is still

$3 million in debt by his own estimate.

Benton Musslewhite was hardly the man to take on seven massive chemical companies or the federal government.

He holds law degrees from Southern Methodist University and Georgetown University and was licensed in April 1954. He worked in a Dallas firm, then two years for judge advocate general's corps at the Pentagon and later practiced in Lufkin with his father.

As an active Democrat at one time, he lost a congressional seat in 1962 by 41 votes after being tagged a liberal. He lost the same seat by 11,000 votes in a second outing four years later.

Sen. Ralph Yarborough then made him his legislative assistant. But when Yarborough left office two years later, Musslewhite moved to Houston and began pursuing real estate ventures and taking personal injury cases.